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August 27, 1998

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RESERVATIONS: 202–523–4538

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WHERE: National Archives—Northeast Region
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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Thursday, August 25, 1998

Presidential Documents

Title 3—

The President

Executive Order 13100 of August 25, 1998

President's Council on Food Safety

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the safety of the food supply through science-based regulation and well-coordinated inspection, enforcement, research, and education programs, it is hereby ordered as follows:

Section 1. *Establishment of President's Council on Food Safety.* (a) There is established the President's Council on Food Safety (''Council''). The Council shall comprise the Secretaries of Agriculture, Commerce, Health and Human Services, the Director of the Office of Management and Budget (OMB), the Administrator of the Environmental Protection Agency, the Assistant to the President for Science and Technology/Director of the Office of Science and Technology Policy, the Assistant to the President for Domestic Policy, and the Director of the National Partnership for Reinventing Government. The Council shall consult with other Federal agencies and State, local, and tribal government agencies, and consumer, producer, scientific, and industry groups, as appropriate.

(b) The Secretaries of Agriculture and of Health and Human Services and the Assistant to the President for Science and Technology/Director of the Office of Science and Technology Policy shall serve as Joint Chairs of the Council.

Sec. 2. *Purpose.* The purpose of the Council shall be to develop a comprehensive strategic plan for Federal food safety activities, taking into consideration the findings and recommendations of the National Academy of Sciences report ''Ensuring Safe Food from Production to Consumption'' and other input from the public on how to improve the effectiveness of the current food safety system. The Council shall make recommendations to the President on how to advance Federal efforts to implement a comprehensive science-based strategy to improve the safety of the food supply and to enhance coordination among Federal agencies, State, local, and tribal governments, and the private sector. The Council shall advise Federal agencies in setting priority areas for investment in food safety.

Sec. 3. *Specific Activities and Functions.* (a) The Council shall develop a comprehensive strategic Federal food safety plan that contains specific recommendations on needed changes, including measurable outcome goals. The principal goal of the plan should be the establishment of a seamless, science-based food safety system. The plan should address the steps necessary to achieve this goal, including the key public health, resource, and management issues regarding food safety. The planning process should consider both short-term and long-term issues including new and emerging threats and the special needs of vulnerable populations such as children and the elderly. In developing this plan, the Council shall consult with all interested parties, including State and local agencies, tribes, consumers, producers, industry, and academia.

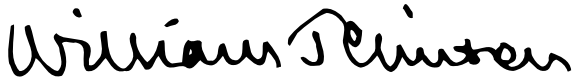
(b) Consistent with the comprehensive strategic Federal food safety plan described in section 3(a) of this order, the Council shall advise agencies of priority areas for investment in food safety and ensure that Federal agencies annually develop coordinated food safety budgets for submission to the OMB that sustain and strengthen existing capacities, eliminate duplication, and ensure the most effective use of resources for improving food

safety. The Council shall also ensure that Federal agencies annually develop a unified budget for submission to the OMB for the President's Food Safety Initiative and such other food safety issues as the Council determines appropriate.

(c) The Council shall ensure that the Joint Institute for Food Safety Research (JIFSR), in consultation with the National Science and Technology Council, establishes mechanisms to guide Federal research efforts toward the highest priority food safety needs. The JIFSR shall report to the Council on a regular basis on its efforts: (i) to develop a strategic plan for conducting food safety research activities consistent with the President's Food Safety Initiative and such other food safety activities as the JIFSR determines appropriate; and (ii) to coordinate efficiently, within the executive branch and with the private sector and academia, all Federal food safety research.

Sec. 4. *Cooperation.* All actions taken by the Council shall, as appropriate, promote partnerships and cooperation with States, tribes, and other public and private sector efforts wherever possible to improve the safety of the food supply.

Sec. 5. *General Provisions.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. Nothing in this order shall affect or alter the statutory responsibilities of any Federal agency charged with food safety responsibilities.



THE WHITE HOUSE,
August 25, 1998.

[FR Doc. 98–23258
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Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

7 CFR Part 59

[Docket No. 97–069F]

RIN 0583–AC04

Refrigeration and Labeling Requirements for Shell Eggs

AGENCY: Food Safety and Inspection Service.

ACTION: Final rule and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is revising its regulations governing the inspection of eggs and egg products to implement 1991 amendments to the Egg Products Inspection Act (EPIA). These amendments require that shell eggs packed for consumer use be stored and transported under refrigeration at an ambient temperature not to exceed 45°F (7.2°C). In addition, the amendments require that these packed shell eggs be labeled to state that refrigeration is required. Finally, the amendments require that any shell eggs imported into the United States packed for consumer use include a certification that the eggs, at all times after packing, have been stored and transported at an ambient temperature of no greater than 45°F (7.2°C).

DATES: *Effective Date:* The effective date of the final rule is August 27, 1999.

Comment Date: As noted below, the proposed rule concerning refrigeration and labeling requirements for shell eggs was published on October 27, 1992. Because the proposed rule was published approximately six years ago, FSIS is requesting comments on this final rule. FSIS requests comments on the economic impact analysis in these regulations and on options for monitoring compliance with the refrigeration and labeling requirements. Comments must be received on or before October 26, 1998.

ADDRESSES: Send an original and two copies of comments to: FSIS Docket Clerk, Docket #97–069F, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Reference material cited in the document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

In 1991, as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Pub.L. 102–237) (hereafter referred to as ''the 1991 EPIA amendments''), Congress amended the EPIA to require that egg handlers store and transport shell eggs destined for the ultimate consumer under refrigeration at an ambient temperature of no greater than 45°F (7.2°C) (21 U.S.C 1034(e)(1)(A)). (See also 21 U.S.C. 1037(c)). The 1991 EPIA amendments specify that these refrigeration requirements apply to shell eggs after they have been packed into a container destined for the ultimate consumer. The 1991 EPIA amendments also require that egg handlers label the shell egg containers to indicate that refrigeration is required (21 U.S.C. 1034(e)(1)(B)). In addition, these amendments require that any eggs packed into a container destined for the ultimate consumer and imported into the United States include a certification that the eggs have, at all times after packaging, been stored and transported at an ambient temperature that is no greater than 45°F (7.2°C) (21 U.S.C. 1046(a)). The 1991 EPIA amendments specify that these requirements become effective 12 months after promulgation of final regulations implementing the EPIA amendments (21 U.S.C. 1034 note).

The Agricultural Marketing Service (AMS) proposed a rule in 1992 to implement the 1991 EPIA amendments (57 FR 48569, October 27, 1992); however, AMS never published a final rule incorporating these amendments into the regulations governing the inspection of eggs and egg products. Following enactment of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub.L. 103–354; 7 U.S.C. 2204e), food safety issues were consolidated in FSIS. Because these statutorily mandated requirements are intended to improve food safety, FSIS, rather than AMS, is promulgating this final rule to revise the regulations governing the inspection of eggs and egg products to implement the 1991 EPIA amendments. By January 1, 1999, FSIS and AMS will publish revisions to the regulations transferring the provisions concerning refrigeration and labeling of shell eggs from 7 CFR, Chapter I, to 9 CFR, Chapter III, so that these provisions will be in the same title as the Federal meat and poultry products inspection regulations.

The 1998 Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies (1998 Appropriations) (Pub.L. 105–86) provides that $5 million of FSIS' annual appropriation will be available for obligation only after the Agency promulgates a final rule to implement the refrigeration and labeling requirements included in the 1991 EPIA amendments. The Agency is thus revising its regulations to implement these requirements. FSIS is adopting the proposed regulations published in 1992 concerning refrigeration and labeling of shell eggs with some technical changes based on its review of the proposed rule and the comments on that proposal.

In addition to the refrigeration and labeling requirements, AMS's proposed rule included revisions to 7 CFR Part 56, Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for shell eggs. FSIS is publishing this final rule on the refrigeration and labeling requirements but is not revising part 56.

Under the 1991 EPIA amendments, USDA is responsible for enforcing the refrigeration and labeling requirements at storage facilities and transport vehicles of shell egg packers (21 U.S.C. 1034(e)(1) and (2)). The Secretary of Health and Human Services is responsible for enforcing the labeling and refrigeration requirements at food manufacturing establishments, institutions, and restaurants, other than plants packing eggs (21 U.S.C. 1034(e)(3)).

On May 19, 1998 (63 FR 27502), FSIS and the Food and Drug Administration (FDA) published an advance notice of proposed rulemaking (ANPR) concerning *Salmonella* enteritidis (SE) in eggs. Through this notice, the Agencies are seeking to identify farm-to-table actions that will decrease the food safety risks associated with shell eggs. The ANPR may result in additional Agency actions concerning shell eggs. Although this final rule may bring about a small reduction in SE risk, it does not address many of the underlying food safety problems posed by eggs. These problems can only be dealt with in the context of a broader process that examines a variety of food safety issues in addition to ambient air temperatures. Through the ANPR, FSIS and FDA are looking at how best to address the food safety concerns of shell eggs as part of their mutual farm-to-table HACCP strategy. Any additional actions that may result from this process will be considered in light of identified public health risks and available alternatives.

On June 12, 1998, FSIS completed a risk assessment concerning SE in shell eggs and egg products in response to an increasing number of human illnesses associated with consumption of shell eggs (FSIS, *Salmonella Enteritidis Risk Assessment*, Washington, DC, June 12, 1998). The objectives of this risk assessment are to: establish the unmitigated risk of foodborne illness from SE, identify and evaluate potential risk reduction strategies, identify data needs, and prioritize future data collection efforts. This risk assessment developed a model to assess risk throughout the egg and egg products continuum. The risk assessment model was used to estimate the possible benefits of this rule, as discussed below.

Comments

One hundred and fifty-nine comments were submitted in response to the proposed rule. Thirty-one commenters, including private citizens, State departments of agriculture, several trade associations, and several members of the egg industry, supported the proposal. The remainder of commenters opposed the proposed rule or suggested alternatives to it. Commenters opposed to the rule included private citizens, trade associations, and members of the egg industry. The majority of comments from the egg industry opposed the rule and suggested alternatives to it. Six comments were received after the close of the comment period. All of these comments were generally opposed to the proposed rule.

Size of Establishments Required to Comply With the Rule

Several small producers recommended exempting from the refrigeration and labeling requirements producers with flocks of 5,000, 10,000, or 50,000 hens, or exempting producers that marketed a specified number of cases of eggs or a specified number of eggs per week, such as 500 cases per week or 1,200 eggs per week. These producers wanted an exemption from the refrigeration requirements because, they stated, the high costs of complying with the refrigeration requirements would effectively force them out of business. In contrast to these comments from small producers, several other producers and several associations stated that all egg industry members should be treated equally, and that no producers should be exempt from the refrigeration and labeling requirements.

Several commenters stated that they had flocks of less than 3,000 layers but packed eggs from other producers. These commenters asked whether the refrigeration and labeling requirements would apply to them.

Consistent with current regulations that exempt from inspection egg handlers with flocks of 3,000 or fewer birds (see § 59.100), the 1991 EPIA amendments specify that any egg handler with a flock of 3,000 layers or less is not subject to inspection for purposes of verifying compliance with the refrigeration and labeling requirements (21 U.S.C. 1034(e)(4)). Given this consistency, FSIS is responding to Congress's clear intent and limiting the exemption from the refrigeration and labeling requirements in § 59.50 to egg handlers with flocks of 3,000 or fewer layers (§ 59.50(c)).

In response to the comments suggesting that the refrigeration and labeling requirements should apply to all producers, the Agency points out that the statute provides that the refrigeration and labeling requirements in the 1991 EPIA amendments are not applicable to any egg handler with a flock of 3,000 or fewer layers. FSIS concludes that, for clarity, it is appropriate to reflect this fact in its regulations with an exemption.

Egg packers who obtain eggs from other producers will not be exempt from the refrigeration and labeling requirements. The exemption will only apply to egg handlers with a flock of 3,000 or fewer layers who pack eggs from their own flock. This exemption is consistent with the exemption from registration requirements for producer-packers with an annual egg production from a flock of 3,000 hens or less (see § 59.690).

Costs of the Rule

Approximately half the commenters stated that the rule would impose major costs on the industry. Many small businesses stated that the compliance costs associated with this rule could force them out of business.

Several commenters stated that they believed that the cost estimates in the 1992 proposed rule were too low and provided their own cost projections. For example, one small producer stated that it would cost its family-owned business approximately $200,000 to comply with the requirements. One association that represents the poultry, egg, and allied industry received information from its members on the price of refrigerated trucks: One member estimated that a new 26 foot refrigerated tractor trailer would cost $92,000, and another producer stated that a used refrigerated trailer portion costs $25,000. The association stated that, on the basis of this information, the cost of replacing and modifying the industry's fleet might exceed the estimates made by the Department.

In addition, several commenters stated that costs would be particularly high because at the time the proposed rule was published, the Environmental Protection Agency (EPA) was revising laws concerning refrigerants. These commenters believed that, subsequent to purchasing new refrigeration equipment to comply with the 45°F refrigeration requirements, they would again be required to replace refrigeration equipment once the new EPA laws regarding refrigerants went into effect.

Five members of the industry stated that the proposed rule would be extremely costly to the entire shell egg industry. These commenters stated that the cost analysis included in the 1992 proposed rule ignored major costs, such as new higher powered refrigeration units for both warehouses and vehicles, greater insulation requirements for warehouses and vehicles, ongoing depreciation expenses per year on the new refrigeration equipment, replacement costs of new equipment after its useful life, yearly maintenance costs, much higher ongoing yearly energy costs required for higher powered refrigeration units, and the effects of inflation. These commenters stated that compliance costs would outweigh any benefits of reducing cases of salmonellosis. In addition, these commenters stated that the increased compliance costs would force smaller producers and smaller distributers out of business, resulting in layoffs and

higher rates of unemployment. In addition, they stated that the higher cost of compliance would result in higher consumer prices for eggs.

The same five commenters discussed in the preceding paragraph stated that the requirements for imported eggs could also have a negative impact on international trade. These commenters stated that food products prepared with shell eggs abroad may not meet the U.S. refrigeration requirements for shell egg production. Thus, they maintained, the refrigeration requirements would lead to restrictions on imports of foreign food items prepared with shell eggs if refrigeration requirements in a particular country did not meet U.S. standards.

Finally, one association suggested costs to the industry might increase because of increased taxes on energy consumption.

Although the Agency agrees this rule is likely to result in an increase in costs to the industry, the 1991 EPIA amendments and the 1998 Appropriations require that FSIS promulgate this final rule. The Agency's current cost impact analysis is discussed below, under the heading, ''Incremental Social Costs.'' The original analysis of the costs of the regulation was conducted in 1992. The current analysis updates the 1992 cost estimates for inflation and changes in the State regulatory environment. The comments submitted in response to the analysis in the proposed rule were based on 1992 costs. For these reasons, the Agency is providing opportunity for comment on the updated economic impact analysis.

In the discussion of the cost to the industry, the Agency notes that many States already have enacted laws that require ambient temperatures of 45°F for shell egg storage and transportation. As explained below, producers in these States may not incur any significant costs as a result of this rule. In the other States, there is likely to be some increase in costs to the industry.

In regard to EPA laws concerning refrigerants, FSIS notes that those laws are in effect. At this time, the industry will have met these EPA requirements. Therefore, these regulations will not affect industry compliance with EPA requirements.

In response to the comments on international trade, it should be noted that the requirements in these regulations apply to imported shell eggs that are not imported under disease restriction and are destined for the ultimate consumer. The requirements do not apply to other imported processed food products containing eggs.

Finally, with regard to costs that may be imposed due to taxes on energy consumed, no significant new taxes have been imposed based on energy consumed.

Transportation

Many comments from members of the egg industry concerned problems with complying with the proposed transportation requirements. Some commenters stated that the cost of complying with the transportation requirements would be extremely high for them. Others stated that maintaining 45°F during transportation would not be possible. For example, one company stated that its trucks average sixteen deliveries per load, and, in certain situations, the truck doors remain open for ten to fifteen minutes during delivery. Therefore, the company explained, on a warm day, it is impossible to maintain the 45°F temperature in the truck. Another commenter stated that producers servicing family-owned markets and restaurants use a truck with less than one ton capacity, and that a truck of this size is not made with a refrigeration unit with enough cooling capacity to maintain 45°F. One association explained that many of its members believed that the constant opening and closing of the truck's storage compartment during local deliveries would prevent the truck from reaching an ambient temperature of 45°F.

About 20 commenters offered a variety of alternative options for exempting small producers from the requirement that shell eggs remain refrigerated during transportation. These alternative options included exempting from refrigeration requirements eggs delivered within a certain radius of the packing facility, eggs delivered in a certain size truck, and eggs delivered within a certain specified delivery time.

The specific requirement of the 1991 EPIA amendments is that shell eggs be refrigerated at 45°F during transportation. Other than the exemption for egg handlers with 3,000 or fewer layers, the statute does not provide any exemptions from the requirement that shell eggs be refrigerated during transportation. Therefore, the Agency has no discretion concerning this requirement and is not making the changes in the regulations that were requested by the commenters.

Alternative Temperature Requirements

About 15 commenters suggested that eggs should be held at temperatures above 45°F, such as 50°F, 55°F, or 60°F. One commenter noted that the current voluntary grading program regulations require that eggs be kept at 60°F, and that a change to 45°F would be a significant change. Several commenters stated that refrigerating eggs at 45°F would cause them to ''sweat'' when they are exposed to non-refrigerated conditions. These commenters stated that wet eggs can allow the passage of waterborne bacteria into the egg.

Several commenters offered suggestions for additional refrigeration requirements. One member of the industry suggested that the rule might be enhanced if it specified the time allowed for the shell eggs to reach an internal temperature of 45°F. Several other commenters recommended establishing refrigeration requirements that would apply to eggs prior to packing. For example, one State department of agriculture suggested that shell eggs should be refrigerated at 55°F or lower, within 24 hours of being laid, until the egg is washed and packed.

The statute specifically requires that eggs packed for consumer use be stored and transported at 45 °F. Therefore, the Agency has no discretion concerning the required temperature.

In response to the suggestions concerning additional refrigeration requirements, the 1991 EPIA amendments do not specify requirements concerning the internal temperature of eggs or an ambient temperature requirement for eggs that are not yet packed. However, these actions may be considered as part of the review that flows from the joint FSIS/FDA ANPR. FSIS or FDA may take further action in response to these comments at a later time.

Benefits of the Regulation

Approximately 50 commenters questioned whether this regulation would result in any health benefits. Commenters stated that safety problems related to eggs are caused by inadequate food preparation in restaurants and hotels, and that refrigeration by the producer will not remedy this problem. Similarly, several commenters noted that problems often arise because of mishandling by the consumer. Other commenters stated that the Agency should focus efforts on specific egg production establishments or particular regions where *Salmonella* has been detected.

Five comments from members of the shell egg industry stated that there was inadequate scientific evidence to justify the proposal, and that available studies show that relatively few salmonellosis cases can be attributed directly to shell eggs. Therefore, these commenters asserted, there is a need for more complete epidemiological studies and

documentation of actual salmonellosis cases that are directly linked to inadequate refrigeration of shell eggs held by producers and distributors. These commenters noted that studies show no growth of SE in eggs with an *internal* temperature of 45 °F; however, the commenters explained that the internal temperature of eggs will not reach 45 °F as soon as they are stored under refrigeration. They also argued that packed eggs may never reach this temperature throughout the distribution process. Similarly, another commenter stated that commercial processing plants will be unable to bring eggs to 45 °F before they are transported, especially when they are packed in cartons, cased, and stacked on pallets. This commenter also questioned whether the ambient temperature refrigeration requirements would improve the safety of shell eggs.

In contrast, several commenters stated that they believed that these regulations would improve the safety of shell eggs. For example, one medical association stated that existing scientific evidence provides a sufficient basis for requiring that shell eggs be stored and transported in refrigerated trucks at an ambient temperature of 45 °F, and that this refrigeration requirement would control the replication of SE. This commenter stated that, once the rule is effective, reported cases of SE in humans will be markedly reduced. An epidemiologist employed by a Federal agency stated that most human outbreaks of SE in which shell eggs were the probable source could have been prevented if time and temperature abuse had not taken place.

Although there is no consensus concerning the level of health benefits these regulations may achieve, the 1991 EPIA amendments and the 1998 Appropriations require that FSIS promulgate this final rule.

In response to concerns regarding food safety problems because of mishandling of eggs at retail establishments, FDA may propose a rule addressing refrigeration of eggs at retail, as discussed in the ANPR.

With regard to public education efforts, the Food Safety Education and Communications Staff within FSIS provides information to the public concerning numerous food safety issues, including egg-related food safety issues. This office provides food safety education information through USDA's Toll-Free Meat and Poultry Hotline (1–800–535–4555), through public service announcements, printed materials, and a variety of communication channels. In addition, FSIS makes this information available over the Internet (URL: http://www.fsis.usda.gov/).

Finally, as noted under the heading, ''Incremental Social Benefits,'' the Agency has estimated that these regulations would result in a mean reduction of 1.54 percent in salmonellosis cases related to SE in shell eggs. To estimate the reduction of the number of salmonellosis cases that would result from the implementation of these regulations, FSIS's risk assessment model, discussed below, was adjusted so that all eggs were exposed to ambient temperatures of 45 °F or lower after packing. The risk assessment predicts that additional measures would result in greater benefits than would result from the ambient temperature requirements in this rule. For example, the risk assessment predicts that maintaining ambient temperatures of 45 °F throughout processing and distribution (that is, from processing through retail) will result in an eight percent average reduction in human SE illnesses. In addition, the risk assessment model predicts that maintaining internal temperatures of eggs at 45 °F would result in a twelve percent decrease in human SE illnesses (FSIS, *Salmonella Enteritidis Risk Assessment*, Washington, DC, June 12, 1998: 26–27). The Agency recognizes that requiring an internal shell egg temperature of 45 °F (7.2 °C) would result in greater benefits than an ambient temperature requirement; however, the statute provides for an ambient temperature requirement only, and any such additional requirement will have to be considered in response to the ANPR.

Labeling Requirements

Approximately 30 commenters were opposed to the labeling requirements. Some of the commenters mistakenly believed ''warning labels'' would be required. Others stated that the labeling provisions were unnecessary because they believed consumers know that eggs should be refrigerated. Finally, many of these commenters believed the labeling requirements would be costly for producers, and that increased costs would be incurred by consumers.

Several commenters who supported the labeling requirements suggested requiring additional information on egg containers, such as a ''pull date'' or expiration date; a statement identifying the flock that produced the eggs in the container; the phrase, ''keep refrigerated at 45°F or below''; and the packing date and the packing plant number.

Three comments were from companies promoting time/temperature indicators. The companies explained that these indicators are labels that act as temperature recording devices and change color to indicate the temperature at which the carton is held and the length of time the carton is held at a particular temperature. These commenters suggested that time/temperature indicators should be affixed to egg cartons.

Establishments can meet the labeling requirements adopted in this rule (see §§ 59.50(b), 59.410(a), 59.950(a)(4), and 59.955(a)(6)) simply by including the phrase, ''Keep Refrigerated,'' or words of similar meaning, on the egg containers. Therefore, the labeling provisions do not require a warning statement. The Agency has determined that adding this phrase to shell egg labeling will result in only minimal costs for producers that do not currently include this labeling on egg cartons. Furthermore, many producers are currently labeling egg cartons to indicate that the product should be kept refrigerated.

With regard to the recommendations for additional labeling requirements, the statute does not specify any additional labeling provisions, and the Agency is not including additional labeling requirements in these regulations.

Implementation Details

Several commenters questioned how the rule would be implemented and provided suggestions concerning methods for measuring the temperature in transportation vehicles and storage facilities. For example, several commenters questioned the particular location an inspector would use inside a cooler or a truck to obtain the ambient temperature. One commenter recommended that the temperature should be checked at least 10 minutes after all doors are closed. One commenter asked what would happen during a mechanical breakdown, and whether producers should use recording thermometers both in cooler rooms and trucks. One association suggested that inspection of coolers be handled on a case-by-case basis because, the association explained, no two coolers are alike, and their configurations and holding capacities differ. The association also recommended that cooler doors be closed for at least five minutes before temperature readings are taken, and that readings be taken in at least three locations. This same commenter recommended that truck inspections be limited to trucks on property not being loaded, and that inspection of trucks occur before loading, with the door closed for at least five minutes and refrigeration equipment operating. Finally, this same commenter stated that when plants are

found to be out of compliance with the temperature regulations, consideration should be given for re-inspection within the annual quarter before a citation is issued.

Several commenters questioned the intent of proposed § 59.134(b). They were concerned that the provision stating that ''the perimeter of each cooler room * * * shall be made accessible'' would require that they create a walking aisle around the cooler room, or that the entire perimeter would need to be accessible for inspection. The commenters explained that to make the entire perimeter accessible to an inspector would result in reduced storage capacity and increased costs.

In response to the concerns about accessibility of the perimeter of the cooler room, the Agency advises that it does not intend that producers would be required to reduce storage space or create a walking aisle. The Agency is specifying that the perimeter must be accessible because it may often be the warmest area in the cooler, and because the center of the cooler room is typically accessible. An establishment could comply with the requirement that the perimeter of the cooler room be made accessible to inspectors by locating thermometers along the perimeter or allowing inspectors to use extension devices with attached thermometers to obtain the temperature along the perimeter.

The rule will not be effective until a year after the publication date. The Agency is currently considering various policy options for monitoring industry compliance with the rule. In response to the question concerning whether producers should use recording devices in cooler rooms and trucks, producers may install thermometric equipment and temperature recording devices; however, these regulations do not require that producers do so. FSIS requests comments on implementation of this rule.

Longer Phase-In Period

Several commenters recommended that the Department implement the rule over a phase-in period (two commenters suggested a three-year phase-in period), explaining that a phase-in period would provide producers adequate time to bring their equipment into compliance. Similarly, a small producer that expressed general support for the rule argued that the effective date for the final rule should be extended beyond a year from publication to allow the industry more time to meet the refrigeration requirements.

The EPIA specifies that the refrigeration and labeling requirements become effective 12 months after promulgation of final regulations implementing the amendments (21 U.S.C. 1034 note). Therefore, the Agency does not have the authority to provide for an extended phase-in period.

Technical Suggestions

A State department of agriculture commented that the proposed definition of ''immediate container'' is confusing and recommended changing the phrase ''not consumer packaged,'' as used in the proposed definition, to ''not packaged by the consumer.''

In response to the comment concerning the definition of ''immediate container,'' the Agency points out that the phrase, ''not consumer packaged'' refers to eggs packed for a buyer, such as a restaurant or hotel, that buys containers of eggs larger than those for household consumers. This definition simply provides that an immediate container could be a carton for household consumers or a larger container for a restaurant or other institution. To clarify the definition, FSIS has revised it to read, ''Immediate container means any package or other container in which egg products or shell eggs are packed for household or other ultimate consumers.''

One commenter questioned the intent of the provision in proposed § 59.132, which stated that ''access shall not be refused at any reasonable time to any representative of the Secretary to any plant, place of business, or transport vehicle subject to inspection.'' This commenter suggested wording that would provide that access be provided to any representative of the Secretary at any time business operations are being conducted.

In § 59.132, as well as in § 59.760, FSIS has removed the phrase ''at any reasonable time,'' which the commenter questioned, for greater consistency with the EPIA, which does not limit Agency access to establishments (see 21 U.S.C. 1034). FSIS is also making these changes for greater consistency with the Federal meat and poultry inspection regulations (see 9 CFR 381.32 and 9 CFR 306.2), which do not restrict Agency access to establishments.

The Final Rule

When these regulations become effective, egg handlers with flocks of more than 3,000 layers will be required to comply with the new refrigeration and labeling provisions. Consistent with current regulations that exempt from inspection egg handlers with flocks of 3,000 or fewer birds (see § 59.100), the 1991 EPIA amendments specify that any egg handler with a flock of 3,000 layers or less is not subject to inspection for purposes of verifying compliance with the refrigeration and labeling requirements (21 U.S.C. 1034(e)(4)).

To monitor temperatures in storage rooms and transport vehicles, egg handlers with flocks of more than 3,000 layers may choose to install thermometric equipment and temperature recording devices; however, these regulations do not prescribe the means by which egg handlers are to comply with these provisions or to monitor their compliance. These regulations allow establishments the flexibility to determine how to meet the statutory requirements and how to monitor and ensure their compliance. U.S. Department of Agriculture (USDA) inspectors will verify that storage facilities and transport vehicles are refrigerated at or below 45°F (7.2°C).

In § 59.5, FSIS is adding new definitions to the regulations to reflect the terminology in the 1991 EPIA amendments. AMS proposed adding all of these definitions in the 1992 proposed rule. FSIS has added the term ''ambient temperature,'' as used in the 1991 amendments, to clarify that the 45°F (7.2°C) refrigeration requirement refers to the air temperature maintained in a shell egg storage facility or transport vehicle.

The regulations include a definition for ''ultimate consumer'' that reflects how this term is used in the 1991 amendments. The Agency has defined the ''ultimate consumer'' as any household consumer, restaurant, institution or any other party who has purchased or received shell eggs or egg products for consumption. In 1992, AMS proposed to define this term as a household consumer, retail store, restaurant, institution, food manufacturer or other interested party who has purchased or received shell eggs or egg products for use or resale. After review of the proposed language, FSIS determined that an ultimate consumer should be defined as a party that purchases shell eggs or egg products for *consumption*, rather than for use or resale. Therefore, FSIS determined that a retail store or food manufacturer would not be considered an ultimate consumer and has modified the definition accordingly. The term ''ultimate consumer'' is used in the existing regulations, and each time it is used, examples of ''ultimate consumers'' follow the term. As was proposed, FSIS has revised §§ 59.28(a)(1) and 59.690 to remove these examples, because the term will now be included in the definitions section.

The 1991 EPIA amendments specifically refer to eggs that have been packed into a ''container'' and establish refrigeration requirements for shell eggs after packing (21 U.S.C 1037(c)). To implement these amendments, this final rule adds new language to the definition of ''container or package'' to refer to shell eggs in containers destined for the ultimate consumer. The current definition for ''container or package'' does not provide specific examples of a container or package for shell eggs. Therefore, as was proposed, FSIS has revised the definition of ''container or package'' to distinguish between containers for egg products and containers for shell eggs. In the definition of ''immediate container'', FSIS has modified the language proposed in 1992 to clarify that an immediate container means any package or other container in which egg products or shell eggs are packed for household or other ultimate consumers. The labeling requirements would apply to all types of containers (that is, both immediate containers and shipping containers).

As was proposed, FSIS has revised the definition of the term ''egg handler'' to clarify that the ultimate consumer is not considered an egg handler.

As was proposed in 1992, FSIS is incorporating the refrigeration and labeling requirements prescribed by the 1991 EPIA amendments for domestic shell eggs into its regulations by adding §§ 59.50 and 59.410(a). In these sections, FSIS has made only minor revisions to the provisions proposed in 1992. Section 59.410(a) provides that all shell eggs packed into containers destined for the ultimate consumer be labeled to indicate that refrigeration is required and includes an example of labeling that would meet this requirement, ''Keep Refrigerated.'' The provision also allows establishments to use other words of similar meaning.

To reflect the fact that the 1991 amendments specify that egg handlers with flocks of 3,000 or fewer layers are not subject to inspection for purposes of verifying compliance with refrigeration and labeling requirements, § 59.50(c) includes new language that clarifies that producers-packers with a flock of this size are exempt from these refrigeration and labeling requirements.

As was proposed in 1992, FSIS is amending §§ 59.132, 59.134, and 59.760 to clarify that inspectors must be granted access to transport vehicles and cooler rooms to verify that any shell eggs packed into containers for the ultimate consumer are stored and transported at an ambient temperature of no greater than 45°F (7.2°C). Transport vehicles that would be subject to inspection would include containers holding eggs that are attached to railroad cars or semi-trailer chassis.

As discussed above, FSIS has revised the provisions proposed in 1992 under §§ 59.132 and 59.760 to remove the phrase ''at any reasonable time'' for greater consistency with the EPIA and for greater consistency with the Federal meat and poultry inspection regulations.

FSIS has also revised the provision proposed in 1992 under § 59.760 to refer to representatives of the ''Secretary'' rather than representatives of the ''Administrator.'' In the near future, FSIS intends to revise the current definition of ''Administrator'' in this part, which refers to the Administrator of AMS, to refer to the Administrator of FSIS. Because AMS retains surveillance activities under § 59.760, FSIS has revised this section to refer to representatives of the ''Secretary'' rather than representatives of the ''Administrator.'' This revision reflects a change in Agency organization made in response to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994.

As was proposed in 1992, FSIS has revised § 59.915 to incorporate the statutory amendment that imported shell eggs packed into containers destined for the ultimate consumer include a certification stating that the eggs have, at all times after packing, been stored and transported under refrigeration at an ambient temperature of no greater than 45°F (7.2°C). In addition, §§ 59.950 and 59.955 require that imported shell egg containers and imported egg shipping containers be labeled to indicate that refrigeration is required. In each of these sections, FSIS has made only minor changes to the language AMS proposed in 1992.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule. Public Law 102–237 provides that with respect to the temperature requirements contained therein, no State or local jurisdiction may impose temperature requirements pertaining to eggs packaged for the ultimate consumer which are in addition to, or different from, Federal requirements.

Executive Order 12866

FSIS is required to publish these regulations to comply with the 1991 EPIA amendments and the 1998 Appropriations. This rule has been designated significant and was reviewed by the Office of Management and Budget under Executive Order 12866. Executive Order 12866 requires USDA to identify and, to the extent possible, quantify and monetize benefits and costs associated with the rule. This section estimates these benefits and costs. As discussed below, because of changes in State laws concerning the refrigeration of shell eggs, FSIS has changed the baseline that was used for determining costs in the 1992 proposed rule. If the Agency had used the original baseline, the estimated costs would have been higher than the estimates in this rule. In addition, the benefits in this rule are based on the recently completed SE risk assessment and data that were not available in 1992. The estimated annual benefits of this rule are lower than those estimated in 1992 (see 57 FR 48572).

Incremental Social Benefits

The incremental social benefits of the rule are the avoidance of illnesses and deaths associated with consumption of eggs contaminated with SE. SE is a serotype of the family of pathogen *Salmonella.* When the disease affects humans, it causes salmonellosis, which usually appears 6 to 72 hours after eating contaminated eggs and egg products and lasts up to 7 days. Symptoms of this disease include diarrhea, abdominal cramps, fever, nausea, and vomiting (nausea and vomiting develop in less than 50 percent of cases). Children, the elderly, and people with compromised immune systems are particularly vulnerable to SE infection. Deaths from SE disease occur in these vulnerable groups. Statistics of outbreaks reported to the Centers for Disease Control and Prevention (CDC) on foodborne diseases reveal that an increasing number of salmonellosis cases are associated with SE; however, it should be noted that the CDC actively contacts each State to obtain information concerning SE but does not actively contact the States for information on the other *Salmonella* serotypes.

From 1985 to 1993, consumption of eggs was associated with 83 percent of SE-related outbreaks where a food vehicle was identified (CDC, ''Outbreak of *Salmonella enteritidis* Associated with Homemade Ice Cream—Florida, 1993,'' *Morbidity and Mortality Weekly Report* 43(36) (September 16, 1994): 669–671). The proportion of cases of salmonellosis reported to CDC attributable to SE increased from 5 percent in 1976 to 26 percent in 1994 (CDC, ''Outbreaks of Salmonella

Serotype Enteritidis Infection Associated with Consumption of Raw Shell Eggs—United States 1994–1995,'' *Morbidity and Mortality Weekly Report* 45(34) (August 30, 1996): 737–742). In 1995 and 1996, salmonellosis cases attributable to SE represented about 25 percent of salmonellosis cases reported to the CDC. Preliminary data from the Foodborne Diseases Active Surveillance Network (FoodNet) indicate that SE represented 17% of all cases of *Salmonella* in 1996 (*FSIS, FSIS/CDC/FDA Sentinel Site Study: The Establishment and Implementation of an Active Surveillance System for Bacterial Foodborne Diseases in the United States*, February 1997).

In the discussion below, FSIS assumes that SE cases associated with the consumption of eggs represent 25 percent of all human salmonellosis cases. This assumption is based on the percentage of SE cases reported to the CDC in recent years. FSIS is using this percentage rather than the 17 percent based on FoodNet data because the FoodNet database is still being implemented and covers only Minnesota, Oregon, and counties in Connecticut, Georgia, and California. In addition, only the first year of data is available from the Foodnet. The CDC surveillance system has been active for approximately 30 years, all States contribute to the CDC surveillance data, and States receive incentives for submissions to the CDC surveillance system.

In 1996, 39,027 confirmed cases of human salmonellosis were reported to the CDC by State, local, and Federal departments of health. From 1985 through 1996, there have been 508,673 reported cases of salmonellosis (Centers for Disease Control and Prevention, Laboratory Confirmed *Salmonella*, Surveillance Annual Summary, 1993–1995 and 1996). Based on CDC outbreak data, the three illness-causing serotypes most frequently reported—*Salmonella* typhimurium, *Salmonella* heidelberg, and *Salmonella* enteritidis—are most often traced to poultry and eggs when a food vehicle is found. A food vehicle is found in only about 25 to 30 percent of cases.

Since the reporting of outbreak statistics to CDC is voluntary, it is estimated that there are an additional 20 to 100 cases of salmonellosis for every reported case, or some 800,000 to 4 million cases per year (R. Chalker and M. Blaser, ''A Review of Human Salmonellosis: III. Magnitude of *Salmonella* Infection in the United States,'' *Review of Infectious Diseases* 10(1) (1988): 111–124). The severity of the underreported cases as well as their statistical distribution is unknown and hence this analysis could not adjust for such probabilities. The estimate of 800,000 to 4 million is based on the number of cases reported to the CDC surveillance system through 1996 and is confirmed by the data for the 1988–92 period.

TABLE 1.—HEALTH AND ECONOMIC BENEFITS OF REFRIGERATING EGGS AT 45°F RULE: LOW BENEFITS ESTIMATES

Annual number of egg-related human SE cases	Lower bound of health costs associated with column 1 in $ (1996) [1]	Upper bound of health costs associated with column 1 in $ (1996) [2]
661,633 [3]	$225 million	$900 million.
Estimated Reduction in Egg-Related SE Cases due to 45°F Refrigeration [4]		
Health benefits (number of cases avoided)	Lower bound of economic benefits associated with column (1) $ (1996)	Upper bound of economic benefits associated with column (1) in $ (1996)
10,189	$3.47 million	$13.86 million.

[1] Jean C. Buzby and Tanya Roberts, ''Guillain-Barré Syndrome Increases Foodborne Disease Costs,'' *Food Review* (September-December 1997): 36–42. This report provides an estimate of costs of total human Salmonella cases from all food sources. The costs estimated in this table assume that egg-related SE cases represent 25% of total human salmonellosis cases. The report estimates the lower bound of the low estimate of health care costs at $900 million.

[2] Ibid. The report estimates the upper bound of the low estimate of health care costs at $3.6 billion.

[3] FSIS, *Salmonella Enteritidis Risk Assessment*, Washington, DC, June 12, 1998. The number shown in the chart is the estimated mean number of salmonellosis cases resulting from the consumption of SE-contaminated eggs. The estimated number of cases per year in the *Risk Assessment* ranges from 126,374 to 1.7 million.

[4] FSIS, *Salmonella Enteritidis Risk Assessment*, Washington, DC, June 12, 1998. The risk assessment model estimates that refrigeration of eggs at 45°F during storage and transportation will result in a mean reduction of 1.54% in human SE cases.

TABLE 2.—HEALTH AND ECONOMIC BENEFITS OF REFRIGERATING EGGS AT 45° F RULE: HIGH BENEFITS ESTIMATES

Annual number of egg-related human SE cases	Lower bound of health costs associated with column 1 in $ (1996) [5]	Upper bound of health costs associated with column 1 in $ (1996) [6]
661,633 [7]	$1.2 billion	$3.075 billion.

TABLE 2.—HEALTH AND ECONOMIC BENEFITS OF REFRIGERATING EGGS AT 45° F RULE: HIGH BENEFITS ESTIMATES—Continued

Annual number of egg-related human SE cases	Lower bound of health costs associated with column 1 in $ (1996) [5]	Upper bound of health costs associated with column 1 in $ (1996) [6]
Estimated Reduction in Egg-Related SE Cases due to 45°F Refrigeration [8]		
Health benefits (number of cases avoided)	Lower bound of economic benefits associated with column (1) $ (1996)	Upper bound of economic benefits associated with column (1) in $ (1996)
10,189	$18.48 million	$47.355 million.

[5] Jean C. Buzby and Tanya Roberts, ''Guillain-Barré Syndrome Increases Foodborne Disease Costs,'' *Food Review* (September–December 1997): 36–42. This report provides an estimate of costs of total human Salmonella from all food sources. The costs estimated in this table assume that egg related SE cases represent 25% of all human salmonellosis cases. The report estimates the lower bound of the high estimate of health care costs at $4.8 billion.

[6] Ibid. The report estimates the upper bound of the high estimate of health care costs at $12.3 billion.

[7] FSIS, *Salmonella Enteritidis Risk Assessment*, Washington, DC, June 12, 1998. The number shown in the chart is the estimated mean number of salmonellosis cases resulting from the consumption of SE-contaminated eggs. The estimated number of cases per year in the *Risk Assessment* ranges from 126,374 to 1.7 million.

[8] FSIS, *Salmonella Enteritidis Risk Assessment*, Washington, DC, June 12, 1998. The risk assessment model estimates that refrigeration of eggs at 45°F during storage and transportation will result in a mean percent reduction of 1.54% in human SE cases.

Tables 1 and 2 show an estimated number of annual human illnesses resulting from consumption of SE-contaminated eggs. This number is based on the mean estimated annual number of cases in the *Salmonella Enteritidis Risk Assessment* published by FSIS (June 12, 1998). This report estimates that the number of cases of illness resulting from consumption of SE-contaminated eggs ranges from 126,374 to 1.7 million per year. The Agency is using data from the risk assessment rather than the number of reported cases because, as noted above, it is estimated that there are an additional 20 to 100 cases of salmonellosis for every reported case. Tables 1 and 2 display the mean estimate because the mean is not unduly affected by a few moderately small or moderately large values, and this stability increases with the sample size. To estimate the economic value of the health costs of salmonellosis, the USDA's Economic Research Service (ERS) related illnesses and deaths to four types of severity groups of patients. The four severity groups were: (1) those who did not visit a physician, (2) those who visited a physician, (3) those who were hospitalized, and (4) those who died prematurely because of their illness (Jean C. Buzby and Tanya Roberts, ''Guillain-Barré Syndrome Increases Foodborne Disease Costs,'' *Food Review* (September–December 1997): 36–42). Similar severity rates are also used in the risk assessment final report, e.g., treatment by a physician, hospitalization, and mortality. Both sources use the CDC data on severity.

Based on the avoidance of medical costs, ERS estimated the economic values of prevention of these cases. ERS calculated the range of low estimate of avoidance of all foodborne human salmonellosis-linked diseases and deaths, at $900 million and $3.6 billion respectively (in 1996 dollars). ERS calculated the range of high estimate of the health costs at $4.8 billion and $12.3 billion (in 1996 dollars). The wide variation in this range of estimates is attributed both to the wide range in estimates of the number of cases and the economic methods used for the analysis.

The economic methods are the human capital method and the labor market method. The human capital method yields a lower estimated range of $0.9 to $3.6 billion because the cost of premature death in this analysis varies with age and ranged from $15,000 to $2,037,000 (in 1996 dollars). The labor market approach yields the higher range of $4.8 to $12.3 billion because it values the cost of premature death at $5 million per person (in 1996 dollars) (Jean C. Buzby and Tanya Roberts, ''Guillain-Barré Syndrome Increases Foodborne Disease Costs,'' *Food Review* (September–December 1997): 36–42).

Since the ranges of estimates for salmonellosis-related costs estimated by Buzby and Roberts are based on salmonellosis from all food sources, it is necessary to adjust the estimates downwards to obtain only the cases of salmonellosis related to consumption of SE-contaminated eggs. The medical cost data shown in the first rows of Tables 1 and 2 represent 25 percent of the ERS estimates because FSIS assumes that SE-contaminated eggs are responsible for approximately 25 percent of salmonellosis cases. This assumption is based on the percentage of SE cases reported to the CDC and the fact that eggs are responsible for the vast majority of these cases. As noted above, from 1985 to 1993, consumption of eggs was associated with 83 percent of SE-related outbreaks where a food vehicle was found. Also noted above, a food vehicle is found in only about 25 to 30 percent of cases. Given the level of uncertainty in this data, for estimation purposes, the Agency believes it is appropriate to assume that SE-contaminated eggs are responsible for 25 percent of total salmonellosis cases.

Humphrey and Whitehead (1993) suggest that an egg's contents can become contaminated with SE before the egg is laid. They also note that after an infected egg is laid, SE contamination tends to grow inside the egg (T. Humphrey and A. Whitehead, ''Egg Age and Growth of Salmonella Enteritidis PT4 in Egg Contents,'' *Epidemiological Infection* 111 (1993): 209–219). Humphrey suggested that refrigerating during storage can prevent such growth (T.J. Humphrey, ''Growth of Salmonella in intact shell eggs: Influence of Storage Temperature,'' *Veterinarian Record* (1990): 1236–1292). Other measures for preventing growth include refrigeration during transportation and retail sales, reducing shelf life of eggs at retail, thorough

cooking, pasteurization, and processing shell eggs into frozen, liquid, or dry egg products (FSIS, *Salmonella Risk Assessment,* June 12, 1998; T. Hammack, et al., ''Research Note: Growth of Salmonella Enteritidis in Grade A Eggs During Prolonged Storage,'' *Poultry Science* 334 (1993): 1281–1286).

In order to determine the benefits of refrigerating eggs at 45°F, it is necessary to determine the percentage of reduction in the number of egg-related deaths and illnesses from SE cases referred to above. To determine these benefits, this analysis relied on input from a risk assessment model. In June 1998, FSIS completed a risk assessment concerning shell eggs and egg products in response to an increasing number of human illnesses associated with the consumption of shell eggs. The risk assessment developed a model to assess risk throughout the egg and egg products continuum. The risk assessment model consists of five modules. The first module, the Egg Production Module, estimates the number of eggs produced that are infected (or internally contaminated) with SE. The Shell Egg Module, the Egg Products Module and the Preparation and Consumption Module estimate the increase or decrease in the number of SE organisms in eggs or egg products as they pass through storage, transportation, processing and preparation. The Public Health Module then calculates the incidences of illnesses and four clinical outcomes (recovery without treatment, recovery after treatment, treatment by a physician, hospitalization, and mortality) as well as the cases of reactive arthritis associated with consuming SE positive eggs.

Refrigeration of shell eggs at an ambient air temperature of 45°F or below during storage and transportation will retard growth of SE and hence is likely to reduce the associated illnesses and deaths. The risk assessment model estimates that refrigeration of shell eggs at an ambient temperature of 45°F or below can bring about a mean reduction of 1.54 percent in egg-related human illnesses associated with SE. This estimate has a 90 percent confidence interval, with a lower bound of 0 percent and an upper bound of 7 percent. Therefore, there is a range of possible outcomes. Although a 1.54 percent reduction in illnesses associated with SE is the most likely outcome, the regulation could result in no reduction in illnesses or in a reduction as high as 7 percent. This estimate and its confidence interval are based on a model with the assumption that eggs are maintained at an ambient temperature of 45°F after processing through transportation to retail, or other, end users. This result also assumes complete compliance with the regulation. The effect of the regulation was modeled by adjusting the baseline model (consisting of the Production, Shell Egg Processing/ Transportation, Preparation/ Consumption, and Public Health modules) to reflect the regulation's effect. The model adjusted the following temperature variables in the Shell Egg Processing/Transportation module: Storage temperature after processing at off-line processor, Storage temperature after processing at in-line processor, Temperature during transportation to egg users. In the baseline model, these variables were modeled as extending from a low of 41°F, in the case of the storage temperature after processing at in-line processors, to a high of 90°F. The baseline model assumes that eggs are handled under a variety of different temperatures. In modeling the regulation, these variables' distributions were truncated at 45°F. Therefore, all eggs were exposed to ambient temperatures of 45°F or less after packing in the regulation model. The effect of the regulation was calculated as the difference in simulated total human cases between the baseline model and the regulation model. The percent reduction in human illnesses was then calculated by dividing this difference in human cases by the simulated total human cases from the baseline model. It must be noted that the estimated mean reduction in SE illnesses of 1.54 percent referred to above was estimated in a separate run of the model for this rule performed by FSIS scientists and is not included in the risk assessment final report. As noted above, the risk assessment final report estimates the benefits that would result from maintaining an ambient temperature of 45°F throughout processing and distribution (that is, from pre-packing and through retail) and the benefits of maintaining the internal temperature of eggs at 45°F throughout processing and distribution.

The last rows in Tables 1 and 2 show the reductions in SE cases associated specifically with refrigeration of shell eggs based on the mean value of 1.54 percent reduction in cases referred to above. These are the incremental social benefits of the rule. These estimates range from a low of $3.47 million to $13.86 million in Table 1 to a range of $18.48 million to $47.355 million in Table 2 (in 1996 dollars). Requiring refrigeration of eggs at an ambient air temperature of 45°F does not address all the food safety risks posed by shell eggs. Responses to the ANPR will assist FSIS and FDA in the development of a comprehensive, farm-to-table food safety strategy that will address a variety of food safety measures in addition to ambient air temperature. Actions taken subsequent to the analysis of alternatives identified in the ANPR may provide additional benefits associated with further reductions in foodborne illness associated with the consumption of shell eggs.

As noted above, FSIS and FDA have published an ANPR concerning SE in shell eggs (63 FR 27502; May 19, 1998). The number of cases in Tables 1 and 2 are larger than those reported in the ANPR (63 FR 27504) because the figures in the ANPR are based on outbreaks reported to the CDC, while the data on Tables 1 and 2 take into account the fact that many of the cases are unreported. In addition, the cost of illnesses in Tables 1 and 2 differ from those in the ANPR (63 FR 27504) because the estimates in the ANPR were based on 1991 data. FSIS used 1996 data for the cost and benefit analysis in these regulations.

Incremental Social Costs

The incremental social costs associated with the rule include the first year fixed capital costs and the annual recurring costs of compliance to be incurred by the industry. The first year costs would include the costs of replacing or retrofitting refrigeration units, compressors, and coils. These capital costs are required for storing shell eggs at 45°F or below after washing and packing. The capital costs to the industry would also include the costs of replacing or retrofitting transportation vehicles that have refrigeration units capable of producing air at 45°F or below. The annual recurring costs would encompass the energy costs of maintaining ambient temperatures in storage facilities and transportation vehicles at 45°F or below. These capital and recurring costs would be incurred either by shell egg producers or by their contractors for storage and transportation. When the storage or transportation services are contracted out, however, it is very difficult to separate the costs associated with shell eggs because these contractors store or haul not only shell eggs but also several other products.

An additional element of the social costs would be the *incremental* budgetary costs, if any, to USDA for enforcing this regulation. The Agency has not determined how it will enforce this rule. AMS may check the ambient temperature of shell egg storage

facilities and the labeling of shell egg containers during its surveillance of egg handlers and during grading activities. FSIS compliance officers may check the ambient temperature of shell egg storage facilities and transportation vehicles and the labeling of shell egg containers once the eggs leave the plant. For example, while compliance officers are checking meat and poultry products in commerce outside inspected establishments or at uninspected facilities, if such facilities store shell eggs, compliance officers may also check temperatures at these locations and verify that the labeling of egg containers meets the requirements in this rule.

Whether AMS or FSIS checks the temperature of shell egg storage facilities and transport vehicles and verifies that the labeling of egg containers meets the requirements in this rule, these activities are likely to be in addition to other Agency activities conducted at the same location. Checking temperatures and labeling will increase the time required for AMS or FSIS personnel to conduct their oversight activities. However, FSIS is unable to determine the amount of additional time that will be required. Therefore, the Agency is unable to estimate the additional costs (e.g., personnel costs and costs of equipment such as thermometers) that will be required for monitoring compliance with the requirements in this rule.

The costs of compliance to the industry are not likely to be excessive for three reasons. First, the rule exempts small producers with flocks of 3,000 layers or less. There are approximately 80,000 such small egg producers that would not be required to comply with the refrigeration and labeling provisions of this rule.

Second, of the approximately 700 producers currently registered with USDA as of July 1998, 329 are major producers with flocks of 75,000 or more who produce about 94 percent of U.S. table eggs. Most of these producers are members of United Egg Producers (UEP), an organization that provides a variety of services to member egg producers. The UEP already has a quality assurance program that recommends refrigerating eggs at 45°F or below as quickly as possible after washing and grading and that the same temperature be maintained during transportation. A letter from UEP indicated that many of these producers have already started refrigerating at 45°F or below. Therefore, these producers are unlikely to incur additional costs of compliance. (This aspect is elaborated later in a section on the Regulatory Flexibility Act (RFA).) It is likely that most producers that are not members of UEP or are not major producers have also begun refrigerating shell eggs during storage and transportation because of State requirements (discussed below). With regard to producers that are not members of the UEP or are not major producers, specific information regarding whether they store and transport shell eggs at 45°F is not available. The structure of egg industry is changing toward greater concentration of large producers. For example, the number of producers registered with AMS has declined from about 1,200 in 1992 to approximately 700 in July, 1998. The resulting concentration of larger producers who refrigerate their supplies is likely to have reduced the costs of compliance.

Third, many States have already enacted laws requiring specified ambient air temperatures for shell egg storage and transportation. Approximately one-half of all States require 45°F or less for storage and transportation. Approximately ten of these States have adopted 45°F refrigeration requirements since 1992. Some of these States are large producers. Many States also require that shell eggs be refrigerated at 45°F at retail. Approximately ten States retain the 60°F traditionally required under USDA grading standards. Approximately one dozen States have no refrigeration requirement for shell egg storage and transportation. Costs of compliance for the shell egg producers in the States already requiring refrigeration at 45°F are not likely to increase significantly. Some of the States that require 45°F refrigeration of shell eggs during storage and transportation are among States in which major producers are located, e.g., Ohio, Pennsylvania, and Georgia. However, there are States with major producers and other producers that do not require 45°F refrigeration during storage and transportation of shell eggs. The Agency requests information concerning the costs these regulations may impose on producers who are currently not refrigerating shell eggs at 45°F during storage and transportation. The Agency also requests information concerning the size of these establishments.

The rule proposed on October 27, 1992 for refrigerating shell eggs at 45°F or below estimated the first-year capital investment costs at $40.67 million (57 FR 48571). The annual recurring operating costs were estimated at $10 million. The capital investment costs involved replacing or retrofitting existing refrigeration units with larger compressors or coils. The recurring annual operating costs involved the energy costs of maintaining ambient air temperatures in storage facilities and transport vehicles at 45°F or below. These cost estimates were based on data obtained from a survey of 80 (7 percent) out of the 1200 shell egg processing plants located throughout the country representing about 25 percent of production. 59 plants (75 percent) responded to the survey. The Agency was unable to evaluate the comments regarding the specific large costs of acquiring trucks and equipment because the survey did not contain such detailed data.

The costs to comply with this final rule will be lower than the costs estimated for the proposed rule in 1992 because about ten States (e.g., Arkansas, Florida, Georgia, Louisiana, Ohio, Oregon, Rhode Island, and Texas) have already adopted refrigeration requirements at 45°F or below for storage and transportation since 1992. These States represented 29 percent of shell egg production in 1996. FSIS updated the 1992 estimates to account for inflation and changes in State laws. The Agency requests specific information concerning costs that will be incurred in States that have not enacted refrigeration requirements.

The costs estimated in 1992 were not adjusted upward for any of the comments to the proposed rule because about 10 States have implemented the 45°F refrigeration requirements since 1992. Since about ten out of fifty States representing 29 percent of production have implemented the rule since 1992, this analysis reduced the capital and recurring costs estimated in 1992 by 29 percent. This adjustment reduced the capital and recurring costs to $28.40 million and $7.1 million respectively. Therefore, costs were reduced based on shell egg production data. FSIS reduced costs based on production data because the 1992 costs were estimated and reported on a production basis (see 57 FR 48571–48572). The fact that the number of producers has declined since 1992 may further lower the costs to the industry because a smaller number of larger producers tend to have lower costs due to scale economies.

The updated costs referred to above were adjusted upwards because of inflation over the last six years. To adjust for this increase, FSIS increased the $28.40 million capital costs by 8 percent (based on U.S. Department of Commerce, Bureau of Economic Analysis, price index of transportation and related equipment index, 1992 = 100, 1997 = 108.5). This adjustment increased the capital cost estimate from

$28.40 million to $30.67 million, or $31 million approximately.

The updated recurring costs of compliance, estimated at $7 million per year in 1992, were assumed to comprise mostly energy costs of refrigeration. These estimates were increased for inflation over the last six years to $7.63 or $8 million approximately (based on U.S. Department of Commerce, Bureau of Economic Analysis, Price Index of Electricity and Gas, 1992 = 100, 1997 = 108.98, or by 9 percent). FSIS requests alternate cost estimates and data to support these estimates from commenters who disagree with the Agency's cost estimates.

The estimated costs of compliance and the associated social benefits of this rule are likely to be realized over the next twenty years. Therefore, these costs and benefits were discounted over this time span by using a 7 percent mid-year discount rate recommended by the Office of Management and Budget.

Table 3 reports FSIS estimates of the discounted costs and benefits of the rule under alternative assumptions about cost of salmonella induced foodborne illness. Depending on the assumption used, the estimated net benefits range from −$79.6 million to $401.30 million. Under the assumption that the cost of foodborne illness varies with age, the net benefits from the rule range from −$79.6 million to $34.2 million. Alternatively, if it is assumed that the cost of premature death is $5 million per person, the net benefits from the rule are higher, from $84.9 million to $401.3 million. In light of the uncertainty surrounding the benefit estimates and refinements to costs, FSIS cannot make a definitive statement about the net benefits associated with the rule.

TABLE 3.—DISCOUNTED BENEFIT-COST ESTIMATES OF REFRIGERATING SHELL EGGS

[Fixed Costs=$31 million, Recurring Costs=$8 million]

	Lower bound of low est.	Upper bound of low est.	Lower bound of high est.	Upper bound of high est.
Recurring benefits: ($ million)	3.47	13.86	18.48	47.36
Discounted Benefits*: ($ m.)	38.03	151.88	202.51	518.93
Discounted Costs*: ($ m.)	117.63	117.63	117.63	117.63
Net Discounted Benefits: (Row 2–Row 3) ($ m.)	−79.60	34.17	84.88	401.30
Benefit-Cost Ratio: (Row 2:Row 3)	0.32	1.29	1.72	4.41

*Discount Rate=7%, Time Period=20 years.
Source: Tables 1 and 2.

The preceding costs are likely to be passed on to consumers by the industry because of the elasticity of demand and supply of eggs. The demand for shell eggs is very inelastic, i.e., an increase in the price of shell eggs is not likely to reduce significantly the demand for them. For example, Kuo reports that the price elasticity of demand for shell eggs is only (−0.11), i.e., an increase in price by one percent is associated with only 0.11 percent decrease in quantity of shell eggs demanded (Huang S. Kuo, *A Complete System of U.S. Demand for Food*, USDA/Economic Research Service, Technical Bulletin No.1821, 1993, Appendix B and C).

The inelastic demand is due to the fact that there are no good substitutes for eggs that consumers might use when prices of shell eggs are increased. Also, a typical consumer spends an insignificant proportion of the food budget on shell eggs and consumes a limited number of eggs.

The supply of shell eggs is very elastic because this industry has hundreds of producers who can increase the supply of eggs with little increase in costs. This prevents price increases by any single producer and no producer can increase prices without losing significant market share. Therefore, egg prices have been stable, if not declining, for several years. For example, wholesale egg prices declined from 91.5 cents/dozen in 1996 to 83.8 cents/dozen in 1997. In the first quarter of 1998, this price declined to 82.5 cents/dozen. The average retail price of grade A large eggs was $1.1063/dozen in 1997 (U.S. Department of Labor/Bureau of Labor Statistics). Per capita consumption of eggs increased only slightly, from 237.8 eggs in 1996 to 239.3 eggs in 1997.

Regulatory Flexibility Act (RFA)

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, this rule exempts from compliance small producers with flocks of 3,000 layers or less. Most of the establishments not exempt from this rule are small establishments with employment of 500 or less. Also, the compliance costs are likely to be spread over a large volume of output that will be produced over the life cycles of these capital assets (e.g., refrigeration equipment). For example, according to the National Agricultural Statistics Service, 5.456 billion dozen eggs were produced between January 1, 1997 and December 31, 1997. During that time, the wholesale price for table eggs, estimated by ERS, was 83.8 cents per dozen, and the gross industry receipts were estimated at $3.96 billion. Therefore, the compliance costs would represent less than a penny per dozen eggs or less than one percent of revenues. Since these first year costs include nonrecurring capital costs for storage facilities and refrigerated vehicles, the impact on the industry would be substantially less in subsequent years. For example, the recurring costs in the subsequent years were estimated at $9 million per year. This cost would represent primarily the energy cost of generating refrigeration and the maintenance and replacement costs of storage facilities. The relative impact on small producers would be insignificant also because the current structure of the shell egg industry is more concentrated than in 1992. For example, currently there are only about 700 producers, compared to about 1,200 producers in 1992. The smaller number of producers with increased output is likely to have resulted in a greater concentration of larger firms in this industry. These larger firms are more likely to absorb the compliance costs relative to smaller firms. FSIS notes that increased costs will not be evenly distributed across the industry because some producers are currently storing and transporting shell eggs at 45 °F, while others are most likely storing and transporting shell eggs at higher temperatures.

The shell egg industry would be able to ''pass through'' this cost in the form of higher prices to consumers because, as noted earlier, demand for this product is very inelastic and the supply

of shell eggs is highly elastic. The inelasticity of the demand follows from the fact that household expenditures on eggs are a small share of household budgets and because substitutes for eggs—at least in some applications—are limited. The high elasticity of supply is based on the fact that there are hundreds of shell egg producers in the U.S. with relatively flat marginal cost curves. Thus, producers expand egg production with little increase in average costs.

The rule would not be burdensome to other small entities such as State and local governments because they are not in the business of storage and transportation of shell eggs. However, to the extent State and local governments are consumers of eggs, they will pay a little more for eggs.

Alternatives to the Rule

FSIS considered several alternatives to this rule. FSIS found the alternatives, which are described below, to be inferior to this rule because of their expected benefits and costs, administrative burden, efficiency, and equity.

No Action

This alternative would continue the current practice of no Federal requirement for refrigeration of shell eggs. The public health benefit would be zero because this alternative would not reduce *Salmonella* related illness. FSIS considered and rejected this alternative because, as noted above, the EPIA amendments mandate promulgation of this rule. In addition, as noted earlier, the Appropriations Committee has withheld $5 million of the FSIS appropriated funds for Fiscal Year 1998 until a final rule is promulgated to implement the refrigeration and labeling requirements included in the 1991 EPIA amendments. A loss of $5 million in the Agency's appropriation is likely to impair FSIS's inspection activities, and degrade food safety in general.

Sliding Scale Approach

This alternative does not require maintenance of a specific ambient temperature, such as the 45°F rule does. Under this approach, a specific ''sell-by'' date is mandatory, which would vary depending on the temperatures at which eggs are maintained. To provide an incentive for processors to chill eggs before shipping, yet retain flexibility to accommodate reasonable alternatives to an absolute temperature requirement, a regulation might prescribe a range of ''sell-by'' dates based on the egg temperature achieved by the packer. Such an approach is under consideration by the European Union but is not recommended for the U.S. because of differences in climate, and vast distances in the U.S. relative to within or even between countries in Europe. This alternative would be burdensome to the industry and difficult to implement because it would require detailed recordkeeping by the industry. Some public health benefits would be expected and would depend on the sell-by date/temperature matrix. Industry costs would depend on the matrix and which temperatures producers select. Finally, this alternative would be very difficult to enforce since USDA inspectors would have to keep track of hundreds of shell egg producers and billions of dozens of eggs.

State Rules Instead of Federal Rule

FSIS considered the alternative of actively encouraging State governments to promulgate their own laws instead of a Federal rule but did not adopt it for several reasons. First, as noted earlier, about half of all States currently have laws requiring refrigeration of shell eggs at 45°F. On the other hand, some States do not have any refrigeration requirements for shell eggs. Other States require refrigeration during storage but not during transportation. Some States require refrigeration of shell eggs at temperatures greater than 45°F. In contrast to these inconsistencies and non-uniformities, with the exception of shell eggs packed by egg handlers with 3,000 or fewer hens, this rule requires that all shell eggs packed in containers for the ultimate consumer be refrigerated during storage and transportation at 45°F or below. The public health benefits of this alternative are expected to be zero, since this alternative is essentially the same as no action except that States would be put on notice that they should deal with public health risks from eggs.

In view of the disparities within and across the States, FSIS determined that it would not be appropriate to defer to the States.

Summary and Conclusions

This section analyzed compliance of this rule with Executive Order 12866. It estimated discounted social benefits of the rule and juxtaposed them against discounted capital and operating costs of compliance with the rule. The analysis concluded that potential net social benefits may result from this rule.

This section also analyzed compliance of this rule with the Regulatory Flexibility Act. It is concluded that the costs of compliance are not likely to have a significant economic impact on a substantial number of small entities because the industry's cost of compliance amounts to less than a penny per dozen eggs, demand for eggs is inelastic, and the supply of eggs is highly elastic. In short, the egg producers could easily ''pass through'' the costs of compliance to consumers without losing their market shares. Other small entities such as local and State governments are also not likely to be adversely affected by this rule because they are not in the business of producing, storing, or transporting shell eggs. To the extent that they are large buyers of eggs, they would be adversely impacted by the estimated increase in price of a penny per dozen eggs.

Finally, this section analyzed several alternatives to the rule. These alternatives included: (1) no action, (2) sliding scale approach, and (3) State rules instead of a Federal rule. These alternatives were rejected because of their costs, administrative burden, efficiency, or equity.

Paperwork Requirements

The paperwork and recordkeeping activities associated with this rule are approved under OMB control number 0583–0106.

List of Subjects in 7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS is amending 7 CFR Part 59 as follows:

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation for part 59 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

2. Section 59.5 is amended by adding alphabetically the definitions for ''Ambient temperature'' and ''Ultimate consumer'' and revising the definitions for ''Container or Package'' and ''Egg handler'' to read as follows:

§ 59.5 Terms defined.

* * * * *

Ambient temperature means the air temperature maintained in an egg storage facility or transport vehicle.

* * * * *

Container or *Package* includes for egg products, any box, can, tin, plastic, or other receptacle, wrapper, or cover and for shell eggs, any carton, basket, case, cart, pallet, or other receptacle.

(a) *Immediate container* means any package or other container in which egg products or shell eggs are packed for household or other ultimate consumers.

(b) *Shipping container* means any container used in packing an immediate container.

* * * * *

Egg handler means any person, excluding the ultimate consumer, who engages in any business in commerce that involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food.

* * * * *

Ultimate consumer means any household consumer, restaurant, institution, or any other party who has purchased or received shell eggs or egg products for consumption.

* * * * *

3. Section 59.28 is amended by revising the first two sentences in paragraph (a)(1) to read as follows:

§ 59.28 Other inspections.

(a) * * *

(1) Business premises, facilities, inventories, operations, transport vehicles, and records of egg handlers, and the records of all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products. In the case of shell egg packers packing eggs for the ultimate consumer, such inspections shall be made a minimum of once each calendar quarter. * * *

* * * * *

4. A new undesignated centerhead and new § 59.50 are added to read as follows:

Refrigeration of Shell Eggs

§ 59.50 Temperature and labeling requirements.

(a) No shell egg handler shall possess any shell eggs that are packed into containers destined for the ultimate consumer unless they are stored and transported under refrigeration at an ambient temperature of no greater than 45°F (7.2°C).

(b) No shell egg handler shall possess any shell eggs that are packed into containers destined for the ultimate consumer unless they are labeled to indicate that refrigeration is required.

(c) Any producer-packer with an annual egg production from a flock of 3,000 or fewer hens is exempt from the temperature and labeling requirements of this section.

5. § 59.132 is revised to read as follows:

§ 59.132 Access to plants.

Access shall not be refused to any representative of the Secretary to any plant, place of business, or transport vehicle subject to inspection under the provisions of this part upon presentation of proper credentials.

6. § 59.134 is amended by revising the section heading, designating the existing text as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 59.134 Accessibility of product and cooler rooms.

* * * * *

(b) The perimeter of each cooler room used to store shell eggs packed in containers destined for the ultimate consumer shall be made accessible in order for the Secretary's representatives to determine the ambient temperature under which shell eggs are stored.

7. Section 59.410 is amended by revising the section heading, designating the existing text as paragraph (b), and adding a new paragraph (a) to read as follows:

§ 59.410 Shell eggs and egg products required to be labeled.

(a) All shell eggs packed into containers destined for the ultimate consumer shall be labeled to indicate that refrigeration is required, e.g., ''Keep Refrigerated,'' or words of similar meaning.

* * * * *

8. Section 59.690 is amended by revising the first sentence to read as follows:

§ 59.690 Persons required to register.

Shell egg handlers, except for producer-packers with an annual egg production from a flock of 3,000 hens or less, who grade and pack eggs for the ultimate consumer, and hatcheries are required to register with the U.S. Department of Agriculture by furnishing their name, place of business, and such other information as is requested on forms provided by or available from the U.S. Department of Agriculture. * * *

9. Section 59.760 is revised to read as follows:

§ 59.760 Inspection of egg handlers.

Duly authorized representatives of the Secretary shall make such periodic inspections of egg handlers, their transport vehicles, and their records as the Secretary may require to ascertain if any of the provisions of the Act or this part applicable to such egg handlers have been violated. Such representatives shall be afforded access to any place of business, plant, or transport vehicle subject to inspection under the provisions of the Act.

10. Section 59.915 is amended by revising the section heading, by removing the word ''and'' at the end of paragraph (b)(8), by redesignating paragraph (b)(9) as paragraph (b)(10) and by adding a new paragraph (b)(9) to read as follows:

§ 59.915 Foreign inspection certification required.

* * * * *

(b) * * *

(9) A certification that shell eggs which have been packed into containers destined for the ultimate consumer have, at all times after packing, been stored and transported under refrigeration at an ambient temperature of no greater than 45°F (7.2°C); and

* * * * *

11. In § 59.950, paragraphs (a)(4) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(9), respectively, and a new paragraph (a)(4) is added to read as follows:

§ 59.950 Labeling of containers of eggs or egg products for importation.

(a) * * *

(4) For shell eggs, the words, ''Keep Refrigerated,'' or words of similar meaning;

* * * * *

12. Section 59.955 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, by redesignating the last sentence of paragraph (a) as new paragraph (b), and by revising paragraph (a) to read as follows:

§ 59.955 Labeling of shipping containers of eggs or egg products for importation.

(a) Shipping containers of foreign product which are shipped to the United States shall bear in a prominent and legible manner:

(1) The common or usual name of the product;

(2) The name of the country of origin;

(3) For egg products, the plant number of the plant in which the egg product was processed and/or packed;

(4) For egg products, the inspection mark of the country of origin;

(5) For shell eggs, the quality or description of the eggs, except as required in § 59.905;

(6) For shell eggs, the words ''Keep refrigerated'' or words of similar meaning.

* * * * *

Done at Washington, DC, on: August 20, 1998.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service.

[FR Doc. 98–22890 Filed 8–26–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA55

Official/Unofficial Weighing Service

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the General Regulations under the Untied States Grain Standards Act, as amended (USGSA), to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. This will provide agencies with more flexibility in providing the weighing services needed by the grain industry. Currently, agencies designated by GIPSA to provide official weighing services cannot provide similar unofficial services.

EFFECTIVE DATE: August 28, 1998.

FOR FURTHER INFORMATION CONTACT: George Wollam, GIPSA, USDA, STOP 3649, 1400 Independence Avenue, SW, Washington, DC 20250, (202) 720–0292 or FAX (202) 720–4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will allow official agencies to provide both official and unofficial weighing services within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. Currently, official agencies designated to provide official weighing services cannot provide similar unofficial services. There are presently 62 agencies designated by GIPSA. Of the 62 agencies, 15 are designated to perform official weighing services; 7 of the 15 are State agencies. The remaining 47 official agencies could provide unofficial weighing services.

Nine official agencies have been allowed by GIPSA to perform both official weighing and unofficial weighing in addition to providing official inspection services. Most of these agencies would be considered small entities under Small Business Administration criteria. Agencies designated to provide official services will be afforded more flexibility in delivering the weighing services needed by the domestic grain market. Existing official agencies not designated to perform official weighing services can continue to provide unofficial weighing services. While the extent to which official agencies will choose to provide unofficial services is difficult to quantify and may depend upon many variables, it is believed that this rule will have a beneficial effect on these agencies and the grain industry as a whole.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

On March 30, 1998, GIPSA published a proposed rule in the **Federal Register** (60 FR 15104) which would allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility, but not on the same mode of conveyance at the same facility.

Prior to the March 30, 1998, proposal, a direct final rule was published on August 2, 1995 (60 FR 39242), which notified the public of amendments to those regulations that prohibit official agencies from providing official weighing service when they provide similar unofficial service. GIPSA had planned to allow agencies to do both official and unofficial weighing within their assigned areas, but not at the same facility. Two written adverse comments in response to the direct final rule were received. One commenter noted that GIPSA did not allow official agencies designated to perform both official weighing services and unofficial weighing because of possible confusion between the two; that the proposed rule was an attempt by a Federal agency to be in direct competition with the private sector; and questioned whether there was a lack of supervising agencies in the weighing area. The other commenter also disagreed that there was a decrease in the availability of unofficial weighing supervision services and expressed concern regarding intrusion by a Federal agency into the private sector.

Initially, GIPSA did not allow agencies to provide both types of service because confusion might result on the part of the grain industry and the official agencies themselves as to which type of service an official agency was providing. GIPSA reevaluated this policy as it applies to weighing and evaluated the case-by-case situations where it has been allowed and found that confusion has not been a factor when GIPSA has separated official and unofficial weighing by not allowing agencies to provide both types of service at the same facility. The requirements for performing official weighing are easily distinguishable from unofficial weighing. Official weighing requires that: (1) Scales be tested by GIPSA; (2) designated agencies follow GIPSA-prescribed procedures to maintain proper operation and accurate weighing; and (3) designated agencies issue GIPSA-approved official grain weight certificates certifying the accuracy of weighing. Since official and unofficial weighing services have distinct requirements, designated agencies should have little problem in maintaining the separation of official and unofficial weighing, as long as it is not on the same mode of conveyance. In addition, GIPSA oversight conducted by the field offices and appropriate headquarters units should be able to detect any problems arising from the change. This action merely allows the users to choose what service they may need at any given time.

Although GIPSA, for the above reasons, disagreed with the adverse comments received as a result of the direct final rule, the direct final rule was inadvertently not withdrawn prior to its effective date as required by the direct final rule process. Consequently, a final rule was published (60 FR 65236) on December 19, 1995, which reinstated the regulations that were in effect prior to the effective date of the direct final rule.

Designated agencies are agencies granted authority under the USGSA to provide official inspection service, or Class X or Class Y weighing services or both, at locations other than export port locations. Most (88 percent) of these agencies are designated for inspection services only. The reason is that before 1976, most grain inspection agencies were already providing weighing as an additional service to grain inspection. These agencies were affiliated with and supervised by the then existing weighing and inspection bureaus under the direction of the Association of American Railroads, local grain exchanges, boards of trade, and various State programs. After the 1976 amendment to the USGSA, weighing performed by the grain inspection agencies became unofficial weighing. Most agencies continued their unofficial weighing and applied for inspection designations only.

However, since 1976, many inspection and weighing bureaus, boards of trade, and the Association of American Railroads have ceased providing supervision of the unofficial weighing services. Unofficial weighing services are currently still available from a variety of industry sources, including many of the agencies already designated by GIPSA for inspection services only.

However, we believe that there is a need for more access to Class X or Class Y weighing services. If allowed to provide both types of service, many more agencies who are now designated for inspection only could also provide official weighing service. Generally, designated agencies can provide Class X and Class Y weighing at a lower cost than GIPSA field offices due to their proximity to the grain facilities. Since 1991, after receiving official weighing requests in several areas, GIPSA's Administrator (under § 800.2 of the regulations) has experimentally allowed designated official agencies to provide both official and unofficial weighing.

Comment Review

GIPSA received one comment in response to its proposal in the March 30, 1998 **Federal Register** (60 FR 15104) to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. The commenter, a national association representing grain, feed and processing companies, supports the proposed change to allow official and unofficial weighing within their assigned areas but not on the same mode of conveyance at the same facility. The commenter believed that providing both types of service would not lead to confusion in the marketplace because: (1) official agencies should have little difficulty distinguishing between official and unofficial weighing, and (2) GIPSA oversight conducted by the field offices and appropriate headquarters units should be able to detect any problems arising from the change.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 533) because: (1) Implementation could be beneficial to the agencies and the grain industry as a whole; (2) the effective date will allow the agencies to be able to provide this service to their customers at the beginning of any local harvest seasons.

Final Action

FGIS is amending the regulations to allow the official agencies to provide official and unofficial weighing services in their assigned areas of responsibility, but not on the same mode of conveyance at the same location. This will allow the official agencies the flexibility in delivering the weighing services needed by the domestic grain market.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR Part 800 is amended as follows:

Part 800 General Regulations

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.76(a) is revised to read as follows:

§ 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any inspection function or provide any inspection service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act. No agency shall perform official and unofficial weighing on the same mode of conveyance at the same facility.

* * * * *

3. Section 800.186(c)(3) introductory text is revised to read as follows:

§ 800.186 Standards of conduct.

* * * * *

(c) * * *

(3) Except as provided in § 800.76(a), engage in any outside (unofficial) work or activity that:

* * * * *

4. Section 800.196(g)(6)(ii) is revised to read as follows:

§ 800.196 Designations.

* * * * *

(g)* * *

(6)* * *

(ii) *Unofficial activities.* Except as provided in § 800.76(a), the agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

* * * * *

Dated: August 20, 1998.

James R. Baker,

Administrator.

[FR Doc. 98–22953 Filed 8–26–98; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1735 and 1753

RIN 0572–AB43

Year 2000 Compliance, Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule adds a new regulation to clarify that RUS will consider telecommunications systems feasible when writing and processing loans only if the system, in addition to being feasible in all other respects, is year 2000 compliant. The interim rule is being published to further ensure that RUS-financed projects pass the year 2000 date changeover without service or revenue disruption. By clarifying feasibility considerations for loan processing, RUS lays the foundation for requests to be made in response to applications submitted to satisfy year 2000 compliance demands.

DATES: Effective August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Acting Assistant Administrator, Telecommunication Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC. Telephone: (202) 720–9554. Facsimile: (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Justification for Interim Rule

It is the policy of RUS that rules relating to loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption of 5 U.S.C. 553, with respect to such rules. However, exemptions are permitted where RUS finds, for good cause, that compliance would be impracticable, unnecessary, or contrary to the public interest.

RUS finds that good cause exists to publish this rule for effect without first soliciting public comment. Some computer-based systems are not programmed to handle the change of date from December 31, 1999, to January 1, 2000. These ''non-compliant'' systems may adopt an incorrect date which can change operating conditions of the system, causing it to malfunction with potentially catastrophic results. Telecommunications switches could quit processing calls, utility billing systems could lose revenue records, and maintenance and administration systems could become corrupted. RUS believes it would be contrary to the public interest to delay the effectiveness of the rule, since it will merely clarify procedures already in effect for determining feasibility by seeking assurance that, before loan funds are provided, borrowers' systems are year 2000 compliant or will be year 2000 compliant within a reasonable time frame. Through this interim rule, RUS is undertaking to address with its telecommunications borrowers year 2000 compliance issues that may affect the operations of RUS-financed rural telecommunications systems, thereby potentially affecting telecommunications services that are critical to public health and safety and to borrowers' feasibility. RUS believes that this program, part of an effort by all USDA Rural Development agencies to prevent year 2000 problems, is not controversial and, therefore, does not signal a necessity for advance public comment. For these reasons, RUS believes that an interim rulemaking is justified.

Classification

This interim rule has been determined to be not significant, and therefore has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this interim rule meets the applicable standards provided in Sec. 3 of the Executive Order.

Regulatory Flexibility Act

Pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this interim rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The rule does not place any mandates on small entities.

The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provision included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Paperwork Reduction Act

This interim rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) (OMB control number 0572–0079).

Environmental Impact

RUS has determined that this interim rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Unfunded Mandates

This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act.

Intergovernmental Review

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees and Rural Telephone Bank loans to governmental and non-governmental entities from coverage under this Order.

Catalog of Federal Domestic Assistance

The program described by this interim rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telecommunications Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

List of Subjects

7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1753

Communications equipment, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 901 *et seq.*, chapter XVII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. In § 1735.22, two new sentences are added at the end of paragraph (e) to read as follows:

§ 1735.22 Loan security.

* * * * *

(e) * * * In addition, RUS considers a system to be feasible only if the system, in addition to being feasible in all other respects, is year 2000 compliant or if the borrower provides RUS with a certification, satisfactory to RUS, that the system will be year 2000 compliant at a reasonable time before December 31, 1999. *Year 2000 compliant* means that product performance and function are not affected by dates before, during, and after the year 2000.

* * * * *

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1753.6, a new sentence is added at the end of paragraph (c) to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

* * * * *

(c) * * * The materials and equipment must be year 2000 compliant, as defined in 7 CFR 1735.22(e).

* * * * *

Dated: August 12, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–22931 Filed 8–26–98; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 9003 and 9033

[Notice 1998–13]

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission is issuing regulations concerning the electronic filing of reports by publicly financed Presidential primary and general election candidates. The rules specify that if Presidential candidates and their authorized committees have computerized their campaign finance records, they must agree to participate in the Commission's recently established electronic filing program as a condition of voluntarily accepting federal funding. These regulations implement the provisions of the Presidential Election Campaign Fund Act (''Fund Act'') and the Presidential Primary Matching Payment Account Act (''Matching Payment Act''), which establish eligibility requirements for Presidential candidates seeking public financing, as well as Public Law 104–79, which amended the reporting provisions of the Federal Election Campaign Act of 1971 (''FECA''). Further information is provided in the supplementary information which follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 9003.1(b)(11) and 9033.1(b)(13), which set forth conditions that Presidential candidates agree to abide by in exchange for receiving public financing for their campaigns. The amendments indicate that Presidential candidates and their authorized committees must agree to file their campaign finance reports electronically. On June 17, 1998, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 63 F.R. 33012 (June 17, 1998). Written comments were received from the Internal Revenue Service and Bob DeWeese of Seattle, Washington in response to the NPRM. Other aspects of the public financing process for Presidential primary and general elections will be addressed separately in a forthcoming Notice of Proposed Rulemaking.

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the Fund Act and Matching Payment Act control the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Regulatory Reform Enforcement Fairness Act, Pub. L. No. 104–121, section 251, 110 Stat. 857, 869 (1996). Section 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 21, 1998.

Explanation and Justification

§ 9003.1 Candidate and committee agreements; and § 9033.1 Candidate and committee agreements

Recently, the Federal Election Commission implemented a system permitting political committees and other persons to file reports of campaign finance activity via computer diskettes and direct transmission of electronic data. *See* Explanation and Justification of 11 CFR 104.18, 61 F.R. 42371 (Aug. 15, 1996). The Commission was required to make the electronic filing option available for all ''report[s], designation[s], or statement[s] required by this Act to be filed with the Commission.'' Public Law 104–79, 109 Stat. 791 (1995) (adding 2 U.S.C. 434(a)(11)). The goals of the new system include the enhancement of on-line access to reports on file with the Commission, the reduction of paper filing and manual processing, and the promotion of more efficient and more cost-effective methods of operation for the filers and for the Commission. While the Commission encourages all political committees and other persons to file their reports electronically, under Public Law 104–79, participation in the Commission's electronic filing program is voluntary.

With the advent of the first Presidential election cycle since the implementation of the new electronic filing system, the Commission published a NPRM seeking comments on modifying its candidate agreement regulations at 11 CFR 9003.1 and 9033.1 to provide that certain Presidential committees must agree to file their campaign finance reports electronically as a condition of voluntarily accepting public funding.

Two comments were received in response to the NPRM. The Internal Revenue Service stated that it does not anticipate that the changes to the FEC's rules will conflict with the Internal Revenue Code or any rules or regulations thereunder. The other comment strongly urged the Commission to adopt the proposed changes to greatly improve the Commission's ability to provide timely and useful disclosure data to the public and to ensure ongoing campaign compliance by candidates throughout the campaign. This commenter pointed out that when the House of Representatives debated another portion of H.R. 2527 (Public Law 104–79), several members extolled the bill's elimination of the three day delay for paper filings traveling from the Clerk of the House to the Commission, thereby demonstrating the importance of timeliness in the public availability of campaign finance reports. This commenter also believed that change in the Commission's rules would enhance the accuracy and usefulness of the information disclosed, improve the news media's ability to file timely stories on candidates' finances, and assist Commission staff in monitoring compliance with campaign finance laws during the campaign.

The Commission has decided to proceed with the changes to the candidate agreement regulations that were described in the NPRM.

Consequently, the final rules which follow establish electronic filing as an additional prerequisite for the receipt of public funding. Please note, however, this new language only applies to the authorized committees of Presidential primary and general election candidates that decide to rely upon a computer system to maintain and use their campaign finance data. Currently, Presidential candidates whose committees have computerized their financial records must agree to produce magnetic tapes or diskettes of receipts, disbursements and other data prior to the beginning of audit fieldwork. 11 CFR 9003.1(b)(4) and 9033.1(b)(5); *see also*, 11 CFR 9003.6, 9007.1(b)(1), 9033.12, and 9038.1(b)(1). Thus, the revised rules, like the current rules, do not burden campaign committees with new requirements if they are not computerized.

Electronic filing of Presidential committees' reports is intended to save a substantial amount of time and Commission resources that would otherwise be devoted to inputting these reports into the FEC's database. Although the number of political committees affected by this amendment to the regulations is relatively small, their reports can be voluminous, given the substantial number of contributions and expenditures listed in each report. Thus, these changes to the candidate agreement rules are expected to speed the reporting of campaign finance information and enhance public disclosure.

Previously, the Commission issued technical specifications for reports filed electronically in its Electronic Filing Specification Requirements (EFSR), which is available free of charge. The EFSR contains technical specifications, including file requirements, for reports filed by Presidential campaign committees. However, the electronic filing software available from the FEC at no charge will not generate the forms used by Presidential committees. On request, the Commission's Data System Development Division will work with committees to assist them in generating the proper output. Any additional costs entailed may be treated and paid for like any other compliance cost pursuant to 11 CFR 9003.3(a)(2)(i)(B) and (F) or 9035.1(c)(1) if incurred after January 1, 1999. The NPRM noted that there are a number of differences between the specifications contained in the EFSR and those found in the Computerized Magnetic Media Requirements (CMMR) used by publicly financed committees to submit financial data for the Commission's audit and to submit digital images of contributions for matching funds. These differences are necessitated, in part, by the different purposes for which each of these databases are used. Neither of the comments received suggested ways in which these two standards could be better synchronized.

The revisions to the candidate agreement regulations do not require electronic filing for statements of candidacy or statements of organization. While Presidential candidates and their authorized committees may file these statements electronically, if they wish, these forms have not been included in the free software available from the FEC. Also please note that the candidate agreements, themselves, should not be submitted in electronic form under the changes to 11 CFR 9003.1 and 9033.1 which follow.

Congress intended the new system of electronic filing to be voluntary. 141 Cong. Rec. H 12140–41 (daily ed. Nov. 13, 1995) (statements of Reps. Thomas, Hoyer, Fazio and Livingston). The Commission believes that a candidate's agreement to file campaign finance reports electronically in exchange for public funding is a voluntary decision materially indistinguishable from the candidate's voluntary decision to abide by the spending limits in exchange for federal funds. For this reason, it appears that the rules set forth below are within the scope of the Commission's authority under the Fund Act, the Matching Payment Act, the FECA, and Public Law 104–79.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that very few small entities will be affected by these rules, and the cost is not expected to be significant. Further, any small entities affected have voluntarily chosen to receive public funding and to comply with the requirements of the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act.

List of Subjects in 11 CFR Parts 9003 and 9033

Campaign funds, Elections, Political candidates.

For the reasons set out in the preamble, Subchapters E and F of Chapter I of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 9003—ELIGIBILITY FOR PAYMENTS

1. The authority citation for 11 CFR Part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

2. In § 9003.1, the introductory text of paragraph (b) is republished, and new paragraph (b)(11) is added to read as follows:

§ 9003.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidates shall:

* * * * *

(11) Agree that they and their authorized committee(s) shall file all reports with the Commission in an electronic format that meets the requirements of 11 CFR 104.18 if the candidate or the candidate's authorized committee(s) maintain or use computerized information containing any of the information described in 11 CFR 104.3.

PART 9033—ELIGIBILITY FOR PAYMENTS

3. The authority citation for Part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

4. In § 9033.1, the introductory text of paragraph (b) is republished, and new paragraph (b)(13) is added to read as follows:

§ 9033.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidate shall agree that:

* * * * *

(13) The candidate and the candidate's authorized committee(s) will file all reports with the Commission in an electronic format that meets the requirements of 11 CFR 104.18 if the candidate or the candidate's authorized committee(s) maintain or use computerized information containing any of the information described in 11 CFR 104.3.

Dated: August 21, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–22967 Filed 8–26–98; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–51–AD; Amendment 39–10722; AD 98–18–06]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth K.G. Model Cirrus Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Schempp-Hirth K.G. (Schemmp-Hirth) Model Cirrus sailplanes. This AD requires modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 millimeter (mm) bolt with an 8 mm bolt. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the threaded bolt that is welded to the connecting rod between the airbrake bellcranks from breaking, which could result in loss of airbrake control with a possible reduction/loss of sailplane control.

DATES: Effective October 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 12, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Schempp-Hirth Flugzeugbau GmbH, Kreben Strasse 25, D–73230 Kircheim unter Teck, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Schempp-Hirth K.G. (Schemmp-Hirth) Model Cirrus sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 18, 1998 (63 FR 33292). The NPRM proposed to require modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 millimeter (mm) bolt with an 8 mm bolt. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Schempp-Hirth Technical Note No. 265–8, dated February 11, 1985.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the unsafe condition identified in this AD occurs during flight and is a direct result of sailplane operation, the FAA has no way of determining how long the 6 mm bolt may go without breaking. For example, the condition could exist on a sailplane with 200 hours time-in-service (TIS), but could be developing and not actually exist on another sailplane until 300 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 21 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 12 workhours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $60 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $16,380, or $780 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–18–06 Schempp-Hirth K.G.: Amendment 39–10722; Docket No. 98–CE–51–AD.

Applicability: Model Cirrus sailplanes, serial numbers 1 through 50, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within the next 4 calendar months after the effective date of this AD, unless already accomplished.

To prevent the threaded bolt that is welded to the connecting rod between the airbrake bellcranks from breaking, which could result in loss of airbrake control with a possible reduction/loss of sailplane control, accomplish the following:

(a) Modify or replace the connecting rod between the airbrake bellcranks, and replace the existing 6 millimeter (mm) bolt with an 8 mm bolt. Accomplish these actions in accordance with Schempp-Hirth Technical Note No. 265–8, dated February 11, 1985.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Schempp-Hirth Technical Note No. 265–8, dated February 11, 1985, should be directed to Schempp-Hirth Flugzeugbau GmbH, Kreben Strasse 25, D–73230 Kircheim unter Teck, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modification and replacements required by this AD shall be done in accordance with Schempp-Hirth Technical Note No. 265–8, dated February 11, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schempp-Hirth Flugzeugbau GmbH, Kreben Strasse 25, D–73230 Kircheim unter Teck, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 85–56, dated March 4, 1985.

(f) This amendment becomes effective on October 12, 1998.

Issued in Kansas City, Missouri, on August 18, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22825 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–120–AD; Amendment 39–10724; AD 98–18–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Model Otter DHC–3 Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Bombardier Inc. (formerly deHavilland Inc) Model DHC–3 (Otter) airplanes that have been modified in accordance with A.M. Luton Supplemental Type Certificate (STC) No. SA3777NM. This AD requires modifying the airplane's electrical system. The actions specified by this AD are intended to prevent electrical system failure caused by inadequate electrical system design, which could result in the loss of the engine instruments or a possible electrical fire in the airplane's cockpit.

DATES: Effective October 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from A.M. Luton, 3025 Eldridge Avenue, Bellingham, Washington 98225; telephone: (360) 671–7817, facsimile: (360) 671–7820. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–120–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone: (425) 227–2594; facsimile: (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Bombardier Inc. Model DHC–3 (Otter) airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 13, 1998 (63 FR 17970). The airplanes affected have electrical system modifications in accordance with A.M. Luton STC No. SA3777NM. The NPRM proposed to require replacing the voltage regulator and voltage-ammeter gauge, and modifying the auxiliary bus systems. These modifications would bring the airplane's electrical system into compliance with the current regulations.

Accomplishment of the proposed action as specified in the NPRM would be in accordance with A.M. Luton Electrical Systems Schematic Drawing 20075, Rev. G and E, Sheets 1, 2, and 3, dated May 15, 1998, which is referenced in A.M. Luton Service Information Letter SA–SIL–98–11–03, ''Electrical Systems'', Revision A, dated May 15, 1998.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comment No. 1: Change in Compliance Time

Three commenters state that the proposed compliance of 100 hours time-in-service (TIS) would be an economic hardship because of the way they operate the affected airplanes. Some operators utilize their airplanes more than 100 hours in a month's time, with many in revenue operations, i.e., air taxi, etc. One operator estimates losing as much as $50,000 if the airplanes had to be out of service for approximately three days to accomplish the proposed modification. All of the commenters state that their fleets have not had any service history problems related to electrical fires and proposed that the compliance time be lengthened to coincide with the next annual inspection.

The FAA concurs. In reviewing the service history of the U.S. registered fleet and the operational levels of the affected airplanes, the FAA has determined that the compliance time should coincide with the airplanes' annual maintenance programs. For this reason, the compliance time of the proposed AD is changed from 100 hours TIS after the effective date of the AD to

14 calendar months after the effective date the AD. This will give all owners/operators of the affected airplanes the opportunity to schedule the actions specified in this AD to coincide with regularly scheduled maintenance. The final rule will be changed accordingly.

Comment No. 2: Circuit Breaker Requirement

One commenter states that there isn't a need for the installation of a circuit breaker on the wire to the auxiliary bus. The commenter expresses that the components drawing from the auxiliary bus utilize individual circuit breakers, and there are other distribution wires in the original electrical system that are not protected by a circuit breaker that have not had any adverse effects.

The FAA does not concur. The subject of this Ad addresses the electrical system changes affected by STC SA3777NM. As installed, the electrical system is not in compliance with part 23 of the Federal Aviation Regulations (14 CFR part 23). The electrical distribution bus was added as part of STC SA3777NM to provide electrical power to the additional engine-related loads. This distribution bus is connected to the battery through the master solenoid with a 10-gauge wire. If a fault in this wire should occur, a hazard in the form of smoke or fire in the cockpit could result. If a determination is made that the original electrical system is similarly protected and poses a safety hazard, then another NPRM may be issued to address that condition. The final rule will not change as a result of this comment.

Comment No. 3: Loadmeter vs. Ammeter

A commenter states that installing a loadmeter should not be mandatory. The commenter states that the ammeter is more useful to pilots and mechanics in performing their duties.

The FAA does not concur. In the original, unmodified electrical system, the ammeter shunt is placed between the battery and the electrical distribution busses, so it properly indicates that the current load. With the incorporation of STC SA3777NM, the additional engine-related electrical loads were added to the battery side of the shunt. As a result, the ammeter does not indicate the total and actual electrical load from (and to) the battery. The ammeter is providing misleading information. The loadmeter was proposed by the STC holder as a solution and as a means to keep the disturbance to existing wiring to a minimum. If the commenter wants to use an ammeter in lieu of a loadmeter, he/she may submit the appropriate information and apply for an alternative method of compliance (AMOC), as specified in paragraph (c) of the AD. The final rule will not change as a result of this comment.

Comment No. 4: Over-Voltage Protection

Two commenters agree with the proposal and state that addressing over-voltage protection is a necessity for the voltage regulator.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in compliance time and minor editorial corrections. The FAA has determined that the compliance time change and the minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 17 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 20 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $2,000 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $54,400, or $3,200 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–18–08 Bombardier Inc. (formerly deHavilland, Inc.): Amendment 39–10724; Docket No. 97–CE–120–AD

Applicability: Model (Otter) DHC–3 airplanes, all serial numbers, certificated in any category, that have been modified by A.M. Luton Supplemental Type Certificate (STC) No. SA3777NM.

Note 1: This AD applies to each airplane identified in the preceding applicability provision that has the applicable STC incorporated, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 14 calendar months after the effective date of this AD, unless already accomplished.

To prevent electrical system failure caused by inadequate electrical system requirements, which could result in the loss of the engine instruments or a possible electrical fire in the airplane's cockpit, accomplished the following:

(a) Replace the voltage regulator and the voltage-ammeter gauge, and modify the auxiliary bus systems in accordance with A.M. Luton Electrical System Schematic, Drawing 20075, Rev. G and E, Sheets 1, 2, and 3, dated May 15, 1998, which is referenced in A.M. Luton Service Information Letter No. SA–SIL–98–11–03, ''Electrical Systems'', Revision A, dated May 15, 1998.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Seattle ACO.

(d) Questions or technical information related to A.M. Luton Electrical Systems Schematic, Drawing 20075, Rev. G and E, Sheets 1, 2, and 3, dated May 15, 1998, and A.M. Luton Service Information Letter No. SA–SIL–98–11–03, ''Electrical Systems'', Revision A, dated May 15, 1998, should be directed to A.M. Luton, 3025 Eldridge Ave., Bellingham, WA 98226; telephone: (360) 671–7817, facsimile: (360) 671–7820. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacements and modifications required by this AD shall be done in accordance with A.M. Luton Electrical System Schematic, Drawing 20075, Rev. G. and E, Sheets 1, 2, and 3, dated May 15, 1998, which is referenced in A.M. Luton Service Information Letter No. SA–SIL–98–11–03, ''Electrical Systems'', Revision A, dated May 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from A.M. Luton, 3025 Eldridge Ave., Bellingham, WA 98226. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on October 10, 1998.

Issued in Kansas City, Missouri, on August 18, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22824 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–02–AD; Amendment 39–10721; AD 98–18–05]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Models K 8 and K 8 B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Models K 8 and K 8 B sailplanes. This AD requires inspecting the canopy hood lock assembly to assure that the height of the cam is at least 2 millimeters (mm), and modifying or replacing any canopy hood lock assembly where the cam is less than 2 mm in height. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the canopy from coming open in flight because the height of the locking cam is less than 2 mm, which could result in loss of the canopy with consequent pilot injury.

DATES: Effective October 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 12, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–02–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Project Officer, Sailplanes/Gliders, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Alexander Schleicher Models K 8 and K 8 B sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 9, 1998 (63 FR 31368). The NPRM proposed to require inspecting the canopy hood lock assembly to assure that the height of the cam is at least 2 mm, and modifying or replacing any canopy hood lock assembly where the cam is less than 2 mm in height. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher Technical Note No. 21, dated May 12, 1980.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the canopy opening will only be unsafe during flight, the condition specified in this AD is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it will be for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 100 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish

the inspection, and that the average labor rate is $60 per work hour. No parts will be required to accomplish the modification. Parts will cost $50 per sailplane if the replacement option is chosen over the modification. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $11,000, or $110 per sailplane if the replacement option is chosen; or $6,000, or $60 per sailplane if the modification option is chosen.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–18–05 Alexander Schleicher Segelflugzeugbau: Amendment 39–10721; Docket No. 98–CE–02–AD.

Applicability: Models K 8 and K 8 B sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the canopy from coming open in flight because the height of the locking cam is less than 2 millimeters (mm), which could result in loss of the canopy with consequent pilot injury, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, inspect the canopy hood lock assembly to assure that the height of the cam is at least 2 mm, in accordance with Alexander Schleicher Technical Note No. 21, dated May 12, 1980.

(b) Prior to further flight after the inspection required by paragraph (a) of this AD, accomplish one of the following, if applicable:

(1) Modify (file) any canopy hood lock assembly where the cam is less than 2 mm in height, in accordance with Alexander Schleicher Technical Note No. 21, dated May 12, 1980; and apply a corrosion preventative (alodine or equivalent substitute); or

(2) Replace any canopy hood lock assembly where the cam is less than 2 mm in height, in accordance with the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 21, dated May 12, 1980, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection and modification required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 21, dated May 12, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 80–158, dated June 16, 1980.

(g) This amendment becomes effective on October 12, 1998.

Issued in Kansas City, Missouri, on August 18, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22823 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–111–AD; Amendment 39–10723; AD 98–18–07]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, and BN–2A MK. 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Britten-Norman Ltd. (PBN) BN–2, BN–2A, BN–2B, and BN–2A MK. 111 series airplanes that are equipped with a PBN Modification NB/M/256, 50A generator system. This AD requires inspecting the airplanes that are equipped with a 50A

generator system for a 70A generator. If a 70A generator is installed, this AD requires replacing the 70A generator with a 50A generator, or (for the BN–2, BN–2A, and BN–2B series only) upgrading the airplane generator system to a 70A system to match the 70A generator. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct damage to the components of the electrical system, which could result in electrical system failure during critical phases of flight.

DATES: Effective October 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 12, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, United Kingdom, PO35 5PR. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–111–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Project Officer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain PBN BN–2, BN–2A, BN–2B, and BN–2A MK. 111 series airplanes that are equipped with a PBN Modification NB/M/256, 50A generator system, was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 9, 1998 (63 FR 31370). The NPRM proposed to require:

- inspecting the airplane for a 70A generator installed on a 50A generator system;
- for PBN BN–2A MK. 111 series airplanes, if a 70A generator is installed on a 50A generator system, the NPRM proposed to require replacing the 70A generator with a 50A generator;
- for the BN–2, BN–2A, and BN–2B series airplanes, the NPRM proposed to require either replacing the 70A generator with a 50A generator; or upgrading the 50A generator system to a 70A generator system by incorporating PBN Modification NB/M/1148; and,
- if PBN Modification NB/M/1148 is incorporated, the NPRM proposed to require the incorporation of PBN Modification NB/M/1571 (which improves the diodes on the 70A generator system).

Accomplishment of the proposed actions as specified in the NPRM would be in accordance with PBN Service Bulletin No. BN–2/SB.229, dated October 17, 1996, and PBN Service Bulletin No. BN–2/SB.228, Issue 2, dated January 17, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

This Action as it Relates to Current AD's

The FAA recently issued AD 98–04–17, Amendment 39–10329 (63 FR 7696, February 17, 1998), which requires that any PBN BN–2, BN–2A, and BN–2B series airplanes that are not equipped with Modification NB/M/1571, but are equipped with PBN Modification NB/M/1148 (which incorporates the 70A generator system) should also be equipped with PBN Modification NB/M/1571. AD 98–04–17 does not affect any airplane that is equipped with a 50A generator system.

Since this AD provides an option that requires accomplishment of AD 98–04–17, the FAA is including reference of other similar AD requirements. Operators of BN–2, BN–2A, and BN–2B series airplanes that have 70A generators installed on 50A generator systems, and choose the option of upgrading their 50A generator system to a 70A generator system, will be subject to the requirements in AD 98–04–17. This AD concurrently requires installing higher amperage diodes in the 70A generator.

Pilatus Britten-Norman informed the FAA that Modification NB/M/1148 or Modification NB/M/1571 is not approved for incorporation on the BN–2A MK. 111 series airplanes.

Cost Impact

The FAA estimates that 80 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 7 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $73,600, or $920 per airplane.

Compliance Time of This AD

The condition addressed by this AD is not caused by operation of the aircraft where the affected generators are installed. The need for the generator system modification or replacement has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS).

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–18–07 Pilatus Britten-Norman Ltd.: Amendment 39–10723; Docket No. 97–CE–111–AD.

Applicability: Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2A MK. 111, BN–2A MK. 111–2, and BN–2A MK. 111–3 airplanes, all serial numbers, certificated in any category, that are equipped with PBN Modification NB/M/256, a 50A Generator System.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To detect and correct damage to the components of the generator system, which could result in generator system failure during critical phases of flight, accomplish the following:

(a) Inspect the generator system for the installation of a 70A generator in accordance with the Inspection section of Pilatus Britten-Norman (PBN) Service Bulletin (SB) No. BN–2/SB.229, dated October 17, 1996.

(b) If a 70A generator is installed, accomplish the following, as applicable:

(1) For Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, and BN–2B–27 airplanes, prior to further flight, either:

(i) Replace the 70A generator with a 50A generator in accordance with the Replacement section of PBN SB No. BN–2/SB.229, dated October 17, 1996; or

(ii) Incorporate PBN Modification NB/M/1148 (a 70A generator system) in accordance with the appropriate Pilatus Britten-Norman maintenance manual; and, incorporate PBN Modification NB/M/1571 (installation of improved generator diodes) in accordance with PBN SB No. BN–2/228, Issue 2, dated January 17, 1996.

Note 2: Incorporating PBN Modification NB/M/1571 is the same action required by AD 98–04–17, Amendment 39–10329.

(2) For Models BN–2A MK. 111, BN–2A MK. 111–2, and BN–2A MK. 111–3 airplanes, prior to further flight, replace the 70A generator with a 50A generator in accordance with the Replacement section of PBN SB No. BN–2/SB.229, dated October 17, 1996.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to PBN Service Bulletin No. BN–2/SB.229, dated October 17, 1996, or PBM Service Bulletin No. BN–2/SB.228, Issue 2, dated January 17, 1996, should be directed to Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, United Kingdom, PO35 5PR. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection, replacement, and modifications required by this AD shall be done in accordance with Pilatus Britten-Norman Service Bulletin No. BN–2/SB.229, dated October 17, 1996, or Pilatus Britten-Norman Service Bulletin No. BN–2/SB.228, Issue 2, dated January 17, 1996.

(1) The incorporation by reference of Pilatus Britten-Norman Service Bulletin No. BN–2/SB.228, Issue 2, dated January 17, 1996, was approved previously by the Director of the Federal Register as of March 23, 1997 (62 FR 4909, February 3, 1997).

(2) The incorporation by reference of Pilatus Britten-Norman Service Bulletin No. BN–2/SB.229, dated October 17, 1996, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained Pilatus Britten-Norman. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British AD 007–10–96, not dated.

(g) This amendment becomes effective on October 12, 1998.

Issued in Kansas City, Missouri, on August 18, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22822 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–136–AD; Amendment 39–10719; AD 98–18–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, that requires modification of the wiring of the strake ice protection system (SIPS). This amendment is prompted by a report of a fire in the electrical and electronic compartment of a Model MD–90–30 series airplane. The actions specified by this AD are intended to prevent an electrical short circuit of the wiring of the SIPS, which could result in a fire in the electrical and electronic compartment of the airplane.

DATES: Effective October 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules

Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes was published in the **Federal Register** on May 28, 1998 (63 FR 29155). That action proposed to require modification of the wiring of the strake ice protection system (SIPS).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 66 Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 15 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be minimal. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $20,700, or $900 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–18–03 McDonnell Douglas: Amendment 39–10719. Docket 98–NM–136–AD.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–30A021, dated March 31, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short circuit of the wiring of the strake ice protection system (SIPS), which could result in a fire in the electrical and electronic compartment of the airplane, accomplish the following:

(a) Within 180 days after the effective date of this AD, modify the wiring of the SIPS and perform a resistance test of the electrical insulation in accordance with McDonnell Douglas Alert Service Bulletin MD90–30A021, dated March 31, 1998. If any strake heating wiring fails the resistance test, prior to further flight, replace the discrepant wiring with new wiring, and repeat the resistance test, in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–30A021, dated March 31, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 1, 1998.

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22820 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–200–AD; Amendment 39–10718; AD 98–18–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Industrie Model A300–600 series airplanes, that currently requires inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment and in the adjacent butt strap and skin panel, and correction of discrepancies. This amendment requires that the initial inspections be accomplished at reduced thresholds. This action also limits the applicability of the existing AD. This amendment is prompted by reports of cracking in the vertical web of the center spar sealing angles of the wing. The actions specified by this AD are intended to prevent crack formation in the sealing angles; such cracks could rupture and lead to subsequent crack formation in the bottom skin of the wing, and resultant reduced structural integrity of the center spar section of the wing.

DATES: Effective October 1, 1998.

The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994, as listed in the regulations, is approved by the Director of the Federal Register as of October 1, 1998.

The incorporation by reference of Airbus Industrie Service Bulletin No. A300–57–6027, including Appendix 1, dated October 8, 1991, as listed in the regulations, was previously approved by the Director of the Federal Register as of January 5, 1994 (58 FR 64112, December 6, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–23–07, amendment 39–8741 (58 FR 64112, December 6, 1993), which is applicable to all Airbus Industrie Model A300–600 series airplanes, was published in the **Federal Register** on June 18, 1997 (62 FR 33040). The action proposed to supersede AD 93–23–07 to continue to require inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment and in the adjacent butt strap and skin panel, and correction of any discrepancies. The action proposed to require that the initial inspections be accomplished at reduced thresholds, and proposed to limit the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Adopt ''Adjustment for Range'' Compliance Times

One commenter, the manufacturer, requests that the proposed AD be revised to utilize the ''adjustment for range'' concept for required compliance thresholds as recommended by Airbus Industrie. The commenter states that, in comparison to the compliance times specified in the related French airworthiness directive, the compliance thresholds specified for paragraphs (c) and (d) of the proposed AD would significantly reduce compliance time for U.S. operators. The commenter considers this difference in the planned compliance intervals to be a change in the FAA's policy regarding inspections, which is not linked to the need to address the unsafe condition, since no technical reason is provided for the difference. Such a deviation is a departure from previously stated FAA policy, which mentions a preference for identical compliance times between the FAA and other airworthiness authorities such as the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. The commenter further states that the proposed AD, if adopted, would unduly penalize U.S. operators of affected Airbus Industrie Model A300–600 series airplanes.

The FAA does not concur. As stated in the preamble of the proposed AD, utilization of ''adjustment for range'' calculations may present difficulties in determining if the applicable actions have been accomplished within the appropriate compliance time. While such adjustable compliance times are utilized as part of the Maintenance Review Board program, they do not fit practically into the AD tracking process for operators or for Principal Maintenance Inspectors attempting to ascertain compliance with AD's. Based on reviews of the ''adjustment for range'' calculations with the FAA Aircraft Evaluation Group, and in further consultation with the manufacturer, the FAA has determined that fixed compliance times should continue to be specified for accomplishment of the actions required by this AD. However, operators may request an extension of the compliance times of this AD in accordance with the ''adjustment for range'' formula, under the provisions of paragraph (g)(2) of the final rule.

Additionally, the FAA acknowledges that a conservative estimate of the average flight time per flight cycle (landing) was used in development of the compliance times for the actions required by paragraphs (c) and (d) of the AD. Therefore, after additional review of the average flight utilization of the U.S. fleet, the FAA has determined that the fixed compliance thresholds may be extended somewhat, and that these compliance thresholds also should be specified in flight hours, as well as flight cycles. Accordingly, paragraphs (c) and (d) of the final rule have been revised to increase the compliance threshold specified in flight cycles, and to add a compliance threshold specified in flight hours. The extension of the flight cycle threshold is expected to provide additional flexibility for operators in planning for accomplishment of the required actions of this AD, and the addition of flight hours will not be restrictive to any U.S. operator. The cost impact information and **Note 2** of the AD also have been revised to reflect these changes to the compliance thresholds and intervals of the final rule.

Request To Increase Grace Period

One commenter requests that the grace period for accomplishment of the actions required by paragraph (c) of the proposed AD be increased from 500 to 1,000 flight cycles. This commenter states that the rule, as proposed, lowers the inspection threshold to 4,638 total flight cycles. Because its fleet of affected airplanes has already passed this threshold, the required actions would need to be accomplished within 500 flight cycles after the effective date of the AD, and those actions cannot be accomplished in this timeframe at a line station. However, an increase in the grace period to 1,000 flight cycles would allow this operator to accomplish the required actions at a main maintenance base.

The FAA does not concur with the request to extend the grace period. As discussed previously, the FAA has determined that the compliance threshold and intervals may be extended for accomplishment of the actions required by paragraphs (c) and (d) of this AD. The initial compliance threshold required by paragraph (c) has been revised from 4,638 total flight cycles to require accomplishment of the required actions ''Prior to accumulation of 10,600 total flight cycles or 22,600 total flight hours, whichever occurs first.'' With this extension of the compliance threshold, the FAA considers that operators will have adequate time to accomplish the required actions, and has determined that no further changes to the compliance times of the AD are necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 34 Model A300–600 series airplanes of U.S. registry that will be affected by this AD.

The requirements of this AD will not add any new additional economic burden on affected operators, other than the costs that are associated with the initial inspection being required earlier than would have been required by AD 93–23–07 (inspection is now required within 10,600 total landings or 22,260 total flight hours, rather than 12,000 total landings, for certain airplanes; and within 13,200 total landings or 27,720 total flight hours, rather than 15,000 total landings, for certain other airplanes). The current costs associated with AD 93–23–07 are reiterated in their entirety (as follows) for the convenience of affected operators.

The costs associated with the currently required inspections entail 8 work hours per airplane, per inspection, at an average labor rate of $60 per work hour. (This figure does not include the time necessary for gaining access and closing up.) Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $16,320, or $480 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8741 (58 FR 64112, December 6, 1993), and by adding a new airworthiness directive (AD), amendment 39–10718, to read as follows:

98–18–02 Airbus Industrie: Amendment 39–10718. Docket 95–NM–200–AD. Supersedes AD 93–23–07, Amendment 39–8741.

Applicability: Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraphs (a) and (b) of this AD restate the requirements for initial and repetitive inspections contained in paragraphs (a) and (c) of AD 93–23–07. Therefore, for operators that have previously accomplished at least the initial inspection in accordance with AD 93–23–07, paragraphs (c) and (d) of this AD require that the next scheduled inspection be performed within 6,000 landings or 12,600 flight hours, whichever occurs first, after the last inspection performed in accordance with paragraph (a) or (c) of AD 93–23–07, or within 500 landings after the effective date of this AD, whichever occurs later.

To prevent crack formation in the sealing angles, which could rupture and lead to subsequent crack formation in the bottom skin of the wing, and resultant reduced structural integrity of the center spar section of the wing, accomplish the following:

Restatement of Certain Requirements of AD 93–23–07

(a) For those airplanes on which the modification described in Airbus Repair Drawing R571–40588 has not been accomplished: Perform high frequency eddy current (HFEC) inspections to detect cracks in the center spar sealing angles adjacent to Rib 8, in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated

October 8, 1991, or Revision 2, dated September 13, 1994, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. After the effective date of this AD, only Revision 2 of the service bulletin shall be used.

(1) For airplanes that have accumulated less than 12,000 total landings as of January 5, 1994 (the effective date of AD 93–23–07, amendment 39–8741): Prior to the accumulation of 12,000 total landings or within 2,000 landings after January 5, 1994, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings until the inspections required by paragraph (c) of this AD are accomplished.

(2) For airplanes that have accumulated 12,000 total landings or more, but less than 14,000 total landings as of January 5, 1994: Prior to the accumulation of 14,000 total landings or within 2,000 landings after January 5, 1994, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings until the inspections required by paragraph (c) of this AD are accomplished.

(3) For airplanes that have accumulated 14,000 total landings or more as of January 5, 1994: Prior to the accumulation of 500 landings after January 5, 1994; and thereafter at intervals not to exceed 6,000 landings until the inspections required by paragraph (c) of this AD are accomplished.

(b) For those airplanes on which the modification specified in Airbus Repair Drawing R571–40588 has been accomplished: Prior to the accumulation of 15,000 landings after accomplishing the modification, or within 500 landings after January 5, 1994, whichever occurs later, perform a HFEC inspection to detect cracks in the center spar sealing angles adjacent to Rib 8, inaccordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991, or Revision 2, dated September 13, 1994. Thereafter, repeat this inspection at intervals not to exceed 6,000 landings until the inspection required by paragraph (d) of this AD is accomplished.

New Requirements of this AD

(c) For those airplanes on which Airbus Modification 08609H5276 (Airbus Service Bulletin A300–57–6033), or the modification specified in Airbus Repair Drawing R571–40588 or R571–40942, has not been accomplished: Perform HFEC inspections to detect cracks in the center spar sealing angles adjacent to Rib 8, in accordance with Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994, at the later of the times specified in paragraph (c)(1) or (c)(2), as applicable, and paragraph (c)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 6,000 landings or 12,600 flight hours, whichever occurs first. Accomplishment of these inspections terminates the requirements of paragraph (a) of this AD.

(1) For airplanes on which HFEC inspections have not been accomplished in accordance with AD 93–23–07: Prior to the accumulation of 10,600 total landings or 22,260 total flight hours, whichever occurs first.

(2) For airplanes on which HFEC inspections have been accomplished in accordance with AD 93–23–07: Within 6,000 landings or 12,600 flight hours, whichever occurs first, after accomplishment of the last inspection performed in accordance with the requirements of paragraph (a) of this AD.

(3) Within 500 landings after the effective date of this AD.

(d) For those airplanes on which Airbus Modification 08609H5276 (Airbus Service Bulletin A300–57–6033) or the modification specified in Airbus Repair Drawing R571–40588 or R571–40942 has been accomplished: Perform a HFEC inspection to detect cracks in the center spar sealing angles adjacent to Rib 8, in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, Revision 2, dated September 13, 1994, at the later of the times specified in paragraph (d)(1) or (d)(2), as applicable, and paragraph (d)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 6,000 landings or 12,600 flight hours, whichever occurs first. Accomplishment of this inspection terminates the requirements of paragraph (b) of this AD.

(1) For airplanes on which HFEC inspections have not been accomplished in accordance with AD 93–23–07: Prior to the accumulation of 13,200 landings or 27,720 flight hours, whichever occurs first, after accomplishing the modification.

(2) For airplanes on which HFEC inspections have been accomplished in accordance with AD 93–23–07: Within 6,000 landings or 12,600 flight hours, whichever occurs first, after accomplishment of the last inspection performed in accordance with the requirements of paragraph (b) of this AD.

(3) Within 500 landings after the effective date of this AD.

(e) If any crack is found in the center spar sealing angles, including cracking entirely through the sealing angle, during the inspections required by paragraph (a), (b), (c), or (d) of this AD: Prior to further flight, replace the pair of sealing angles on the affected wing and cold work the attachment holes, in accordance with Airbus Repair Drawing R571–40589 or R571–40942; and perform the repetitive inspections required by paragraph (c) or (d) of this AD, as applicable.

(f) If any sealing angle is found to be cracked through entirely during the inspections required by paragraph (a), (b), (c), or (d) of this AD: Prior to further flight, perform additional inspections to detect cracks in the adjacent butt strap and skin panel, in accordance with paragraph 2.B.(5) of Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994. If any crack is found in the adjacent butt strap and skin panel, prior to further flight, repair in accordance with Airbus Repair Drawing R571–40611.

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Operators may request an extension of the compliance times of this AD in accordance with the ''adjustment for range'' formula found in paragraph 1(d) of Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994. The average flight time per flight cycle in hours used in this formula should be for an individual airplane. Average flight time for a group of airplanes may be used if all airplanes in the group have flight times differing by no more than 10 percent. If compliance times are based on the average flight time for a group of airplanes, the individual airplane flight times of the group must be submitted to the Manager, International Branch, ANM–116, for review.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections shall be done in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991; and Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994. Revision 2 of Airbus Industrie Service Bulletin A300–57–6027 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–7	2	September 13, 1994.
8–12	1	November 24, 1993.

The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Airbus Industrie Service Bulletin No. A300–57–6027, including Appendix 1, dated October 8, 1991, was approved previously by the Director of the Federal Register as of January 5, 1994 (58 FR 64112, December 6, 1993). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 91–253–128(B)R1, dated March 1, 1995.

(j) This amendment becomes effective on October 1, 1998.

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22818 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–158–AD; Amendment 39–10720; AD 98–18–04]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN–601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model SN–601 (Corvette) series airplanes, that requires repetitive inspections to detect corrosion, cracking, or rupture of the support arms of the aileron balance weights; and repair, if necessary. Accomplishment of the repair terminates the repetitive inspection requirement of this AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent corrosion, cracking, or rupture of the support arms of the aileron balance weights, which may cause reduced flutter damping or jamming of the aileron, and consequent reduced controllability of the airplane.

DATES: Effective October 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model SN–601 (Corvette) series airplanes was published in the **Federal Register** on July 7, 1998 (63 FR 36626). That action proposed to require repetitive inspections to detect corrosion, cracking, or rupture of the support arms of the aileron balance weights; and repair, if necessary. Accomplishment of the repair terminates the repetitive inspection requirement of this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $240, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–18–04 Aerospatiale: Amendment 39–10720. Docket 98–NM–158–AD.

Applicability: All Model SN–601 (Corvette) series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion, cracking, or rupture of the support arms of the aileron balance weights, which may cause reduced flutter damping or jamming of the aileron, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 10 landings or 10 days after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect corrosion, cracking, or rupture of the support arms of the aileron balance weights, in accordance with Aerospatiale All Operators Telex (AOT) A/BTE/AM 499.368/95, dated March 7, 1995.

(1) If no corrosion, cracking, or rupture is detected on the support arms, repeat the inspection thereafter at intervals not to exceed 200 flight hours or 6 months, whichever occurs earlier.

(2) If any corrosion, cracking, or rupture is detected on the support arms: Except as provided by paragraph (b) of this AD, prior to further flight, repair in accordance with the AOT. Accomplishment of this repair constitutes terminating action for the repetitive inspection requirements of this AD.

(b) If any corrosion, cracking, or rupture is detected on the support arms, and Aerospatiale All Operators Telex (AOT) A/BTE/AM 499.368/95, dated March 7, 1995, specifies to contact Aerospatiale for an appropriate repair: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Aerospatiale All Operators Telex (AOT) A/BTE/AM 499.368/95, dated March 7, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 95–054–019 (B), dated March 29, 1995.

(f) This amendment becomes effective on October 1, 1998.

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22815 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–05]

Establishment of Class E Airspace; Tidioute, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Tidioute, PA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 28, a GPS RWY 10 SIAP, a VHF Omni-Directional Radio Range (VOR) Distance Measuring Equipment (DME)–A SIAP, a VOR/DME RNAV RWY 28, and a VOR/DME RNAV RWY 10 SIAP at Rigrtona Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations to Rigrtona Airport at Tidioute, PA.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 30, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Tidioute, PA, was published in the **Federal Register** (63 FR 35547). The development of a GPS RWY 28 SIAP, GPS RWY 10 SIAP, VOR/DME–A SIAP, VOR/DME RNAV RWY 28, and a VOR/DME RNAV RWY 10 SIAP for Rigrtona Airport, Tidioute, PA, requires the establishment of the Class E airspace at the airport. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Tidioute, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 28 SIAP, GPS RWY 10 SIAP, VOR/DME–A SIAP, VOR/DME RNAV 28 SIAP, and VOR/DME RNAV 10 SIAP to Rigrtona Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Tidioute, PA [New]

Rigrtona Airport, PA
(Lat. 41°40′57″N, long. 79°27′11″W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Rigrtona Airport, excluding the portions that coincide with the Titusville, PA and Corry, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York August 17, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–23004 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–12]

Amendment to Class E Airspace; Danville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Danville, VA. The development of a Standard Instrument Approach Procedure (SIAP) based on an Instrument Landing System (ILS) at Danville Regional Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the ILS RWY 2 SIAP to Danville Regional Airport.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 30, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Danville, VA, was published in the **Federal Register** (63 FR 35546). The development of the ILS RWY 2 SIAP for Danville Regional Airport, VA, requires the amendment of the Class E airspace at Danville, VA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Danville, VA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the ILS RWY 2 SIAP to Danville Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Danville, VA [Revised]

Danville Regional Airport, VA
(Lat. 36°34′22″N., long. 79°20′10″W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Danville Regional Airport.

* * * * *

Issued in Jamaica, New York on August 17, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–23003 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–11]

Establishment of Class E Airspace; Carlisle, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Carlisle, PA. The Carlisle Airport is served by a Non-Directional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 28

Standard Instrument Approach Procedure (SIAP) and a VHF Omni-Directional Radio Range (VOR) Distance Measuring Equipment (DME) or GPS–A SIAP. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations to Carlisle Airport at Carlisle, PA.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York, 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 30, 1998, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Carlisle, PA, was published in the **Federal Register** (63 FR 35550). An NDB or GPS RWY 28 SIAP and a VOR/DME or GPS–A SIAP has been published for Carlisle Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Carlisle, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the NDB or GPS RWY 28 SIAP and the VOR/DME or GPS–A SIAP to Carlisle Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Carlisle, PA [New]

Carlisle Airport, PA
(Lat. 40°11′16″ N., long. 77°10′28″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Carlisle Airport.

* * * * *

Issued in Jamaica, New York on August 17, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–23002 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–13]

Establishment of Class E Airspace; Fairfax, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Fairfax, VA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) serving the Mobil Business Resources Corporation (MBRC) Heliport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations to the heliport at Fairfax, VA.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 30, 1998, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Fairfax, VA, was published in the **Federal Register** (63 FR 34837). The development of a Copter GPS 100 SIAP for the MBRC Heliport, Fairfax, VA, requires the establishment of the Class E airspace for the heliport.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are

published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Fairfax, VA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 100 SIAP to the MBRC Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Fairfax, VA [New]

Mobil Business Resources Corporation Heliport, VA
Point In Space Coordinates
(Lat. 38°51′41″ N., long. 77°14′31″ W.)

That airspace extending upward from 700 feet above the surface within an 6-mile radius of the Point in Space serving the Mobil Business Resources Corporation Heliport, excluding that portion that coincides with the Washington, DC, and Chantilly, VA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on August 17, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–23001 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–06]

Establishment of Class E Airspace; Collegeville, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Collegeville, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) serving the Rhone-Poulenc Rorer Collegeville Heliport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations to the heliport at Collegeville, PA.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 30, 1998, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Collegeville, PA, was published in the **Federal Register** (63 FR 35548). The development of a Copter GPS 122 SIAP for the Rhone-Poulenc Rorer Collegeville Heliport, Collegeville, PA, requires the establishment of the Class E airspace for the heliport.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Collegeville, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 122 SIAP to the Rhone-Poulenc Rorer Collegeville Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Collegeville, PA [New]

Rhone-Poulenc Rorer Collegeville Heliport, PA
Point In Space Coordinates
(Lat. 40°10′08″ N., long. 75°28′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Rhone-Poulenc Rorer Collegeville Heliport, excluding that portion that coincides with the Pottstown, PA, North Philadelphia, PA, and Philadelphia, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on August 17, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–23000 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980729198–8198–01]

RIN 0607—AA28

Shipper's Export Declaration Requirements for Exports Valued at Less Than $2,500

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: To further the Bureau of the Census' efforts in harmonizing the Foreign Trade Statistics Regulations (FTSR) with the Bureau of Export Administration's Export Administration Regulations (EAR), this final rule amends the FTSR by revising the Shipper's Export Declaration (SED) provisions to expand the country scope of the $2,500 exemption for filing an SED with the Bureau of the Census.

The revisions contained in this document are consistent with concurrent revisions to the provisions of the Bureau of Export Administration's EAR. The Department of Treasury concurs with the provisions contained in this final rule.

EFFECTIVE DATE: August 27, 1998.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, by telephone on (301) 457–2255 or by fax on (301) 457–2645.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of the Census is amending the FTSR to further its efforts in harmonizing the FTSR with the Bureau of Export Administration's EAR. Specifically, this rule amends § 30.55(h) of the FTSR by revising the SED requirements for exports of items valued at $2,500 or less that do not require a license. With this change, no SED is required for any shipment, except for shipments to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, if the shipment is valued at $2,500 or less per Schedule B Number. The current exemption applied only to countries in Country Group B and China. Note that this exemption does not apply to shipments exported through the U.S. Postal Service, shipments requiring a license from the Department of Commerce, Department of State, or Department of Justice, or shipments of items subject to the International Traffic in Arms Regulations but exempt from license requirements. Conforming amendments to the EAR will be published in the **Federal Register** by the Bureau of Export Administration.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedure Act because it deals with a foreign affairs function (5 U.S.C. (A) (1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603 (a)).

Executive Orders

This rule has been determined not to be significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule covers collections of information subject to the provisions of the PRA, which are cleared by the OMB under OMB Control Number 0607–0152.

This rule will result in a nonmeasurable reduction in the reporting-hour burden requirements. The expansion of the country scope of the exemption will affect only a small percentage of SEDs. It will not measurably impact the current response burden requirement as approved under OMB Control number 0607–0152, under provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 15 CFR Part 30 is amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 CFR 42765.

Subpart A—General Requirements—Exporter

2. Section 30.55 is amended by revising paragraphs (h) introductory text and (h)(1) to read as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) Except as noted in paragraph (h)(2) of this section and for exports to Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, shipments of commodities where the value of the commodities, shipped from one exporter to one consignee on a single exporting carrier, classified under an individual Schedule B number, is $2,500 or less. For Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, a SED is required regardless of the value of the shipment.

(1) This exemption applies to individual Schedule B commodity numbers regardless of the total

shipment value. In instances where a shipment contains a mixture of individual Schedule B commodity numbers valued $2,500 or less and individual Schedule B commodity numbers valued over $2,500, only those commodity numbers valued $2,500 or more need be reported on a Shipper's Export Declaration.

* * * * *

Dated: July 29, 1998.

James F. Holmes

Acting Director, Bureau of the Census

[FR Doc. 98–23017 Filed 8–26–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 758

[Docket No. 980730200–8200–01]

RIN 0694–AB71

Shipper's Export Declaration Requirements for Exports Valued Less Than $2,500

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: To further the Bureau of Export Administration's efforts in harmonizing the Export Administration Regulations (EAR) with the Bureau of the Census Foreign Trade Statistics Regulations, this final rule amends the EAR by revising the Shipper's Export Declaration (SED) provisions to expand the country scope of the $2,500 exemption for filing an SED with the Bureau of the Census. This final rule also clarifies that the Harmonized Tariff Schedule number may be used in lieu of the Schedule B number on the Shipper's Export Declaration. This final rule will not significantly affect the paperwork burden on U.S. industry.

DATES: This rule is effective August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to further its efforts in harmonizing the EAR with the Bureau of the Census Foreign Trade Statistics Regulations (FTSR). Specifically, this rule amends § 758.1(e)(1)(i)(A) of the EAR by revising the Shipper's Export Declaration (SED) requirements for exports of items valued at $2,500 or less. With this change, no SED is required for any shipment, other than a shipment made under a license issued by BXA or shipments to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, if the shipment is valued at $2,500 or less per Schedule B Number. Conforming amendments to the FTSR will be published in the **Federal Register** by the Bureau of the Census.

This rule also amends §§ 758.1 and 758.3 of the EAR by replacing the phrase ''or other number acceptable to the Foreign Trade Division, Bureau of the Census'' with the phrase ''or Harmonized Tariff Schedule number.'' This will clarify an existing policy of the Bureau of the Census to allow exporters to use either the Schedule B number or the Harmonized Tariff Schedule number when preparing the SED.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 44121, August 17, 1998).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0607–0152.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and record keeping requirements.

Accordingly, part 758 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

PART 758—[AMENDED]

2. Section 758.1 is amended by revising the paragraph (e)(1)(i)(A) to read as follows:

§ 758.1 Export clearance requirements

* * * * *

(e) * * *

(1) * * *

(i) * * *

(A) Any shipment, other than a shipment made under a license issued by BXA or shipments to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria if the shipment is valued at $2,500 or less per Schedule B Number. The Schedule B number of an item is shown in the current edition of the Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States.* As used in this paragraph (e), ''shipment'' means all items classified under a single Schedule B number (or Harmonized Tariff Schedule number if the Schedule B number is not available), shipped on the same carrier, from one exporter to one importer. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) shall govern the valuation of items when determining whether a shipment meets the $2,500 threshold of this paragraph.

* * * * *

§ 758.3 [Amended]

3. Section 758.3 is amended by revising the parenthetical phrase ''(or other number acceptable to the Foreign Trade Division, Bureau of the Census)'' to read ''(or Harmonized Tariff Schedule number)'' in the following places:

§ 758.3(f)(1)
§ 758.3(g)(1)
§ 758.3(g)(2)(i)
§ 758.3(g)(2)(ii)—2 references
§ 758.3(g)(3)
§ 758.3(h)(1)

Dated: August 18, 1998

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–23018 Filed 8–26–98; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Orders Eligible for Post-execution Allocation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has amended Commission Regulation 1.35(a–1) to allow bunched orders for eligible customers to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution. Specifically, the amendment exempts from the customer account identification requirements of Regulation 1.35(a–1)(1), (2)(i), and (4) bunched futures and/or option orders placed by eligible account managers on behalf of eligible customer accounts. The amendment permits bunched orders entered on behalf of these accounts to be allocated no later than the end of the day on which the order is executed.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: I. Michael Greenberger, Director; Alan L. Seifert, Deputy Director; John C. Lawton, Associate Director; Duane C. Andersen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Current Regulatory Requirements

The Commission's Regulations 1.35(a–1) recordkeeping requirements, in effect since March 24, 1972, specify that customer orders must be recorded promptly and include customer account identification at the time of order entry and the time of report of execution. Specifically, Commission Regulation 1.35(a–1)(1) requires that each futures commission merchant (''FCM'') and each introducing broker (''IB'') receiving a customer's order immediately prepare a written record of that order, which includes an account identifier for that customer. Regulation 1.35(a–1)(2)(i) requires that each member of a contract market who receives a customer's order on the floor of a contract market that is not in writing immediately prepare a written record of that order, including the appropriate customer account identification. Regulation 1.35(a–1)(4) requires, among other things, that each member of a contract market reporting the execution of a customer's order from the floor of a contract market include the account identification on a written record of that order.

B. Prior Regulatory Action

On June 8, 1992, the Commission published for public comment a proposed amendment to Chicago Mercantile Exchange (''CME'') Rule 536 (''1992 proposal'').[1] The amendment would have exempted from CME customer account designation requirements certain orders placed by a limited group of investment managers on behalf of specified institutional accounts. The orders would have been required to be allocated prior to the end of the day. The Commission received 31 comments, which were addressed in the Commission's subsequent proposed amendment to Regulation 1.35, discussed below.[2]

On May 3, 1993, the Commission published for public comment proposed amendments to Regulation 1.35(a–1) designed to accommodate the CME proposal (''1993 proposal'')[3] and the related comments thereon. In addition to amending Regulations 1.35(a–1)(1), (2), and (4), the Commission proposed to add paragraphs 1.35(a–1) (5) and (6). Paragraph (5), which addressed the placement of bunched orders and the use of predetermined allocation formulas, was superseded by the Commission's Notice of Interpretation and Approval Order, published May 9, 1997.[4] This Order approved the National Futures Association (''NFA'') Interpretative Notice to NFA Compliance Rule 2–10 Relating to the Allocation of Block Orders for Multiple Accounts which established standards and procedures for allocating orders pursuant to predetermined allocation schemes.[5]

Paragraph (6) was the Commission's followup to CME's 1992 proposal. Paragraph (6) proposed allowing the placement of certain bunched ''intermarket'' orders without customer account identification and permitting the allocation of those orders at the end of the day. The Commission stated that the proposed regulation would encourage and facilitate institutional participation in the futures markets subject to customer protection requirements that were consistent with the sophistication of the institutional

[1] 57 FR 24251 (June 8, 1992).

[2] Twenty-six of the comments evidenced support for the proposed rule amendment, four were opposed to the amendment, and one recommended caution.

[3] ''Account Identification for Orders Submitted on Behalf of Multiple Customer Accounts,'' 58 FR 26274 (May 3, 1993).

[4] 62 FR 25470 (May 9, 1997).

[5] The Order also provided additional Commission guidance regarding bunched orders and allocation procedures. The guidance provided therein has since been published as Appendix C to Part One of the Commission's regulations.

customers. The Commission received 34 comments. Most commenters found the proposed rule burdensome and too restrictive to be of value. In particular, many commenters objected (1) to the proposed requirement for an intermarket trading strategy involving securities and (2) to the detail of recordkeeping and certification requirements.

Following review of the comments on the 1993 proposal, the Commission staff continued to consider alternative means to provide relief from the account identification requirements without increasing the potential for preferential allocation.

C. Proposed Amendment to Regulation 1.35(a–1)

On January 7, 1998, the Commission published the reproposed amendments to Regulation 1.35(a–1) for public comment (''1998 proposal'') as a response to the concerns raised in the 1993 proposal.[6] In addition to amending Regulation 1.35(a–1)(1), (2), and (4), the Commission proposed to add paragraph 1.35(a–1)(5). Under the 1998 proposal, a specific customer's account identifier need not be recorded at the time an eligible bunched order (''eligible order'') is placed or upon report of execution, and the order could be allocated by the end of the day on which it was executed, provided that certain requirements were met. The order must be handled in accordance with contract market rules submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41.

The Commission received 13 comments in response to the 1998 proposal. Commenters included four associations,[7] six exchanges,[8] and four firms registered with the Commission as FCMs.[9] Although most comments found that the 1998 proposal eliminated many of the practical difficulties of the 1993 proposal, they also contended that unnecessary restrictions remained. Among the 1998 proposal's provisions found to be overly restrictive were the portfolio requirement,[10] the customer consent requirement, the limitation on proprietary interest, the exclusion of foreign advisers as eligible account managers, and the exclusion of natural persons as eligible customers.

The Commission has carefully reviewed the comments received and agrees with the commenters that these restrictions can be eliminated and that certain other provisions can be modified. With regard to the proposed customer consent requirement and the limitation on proprietary interest, the Commission has adopted the suggestion of many commenters that, as detailed below, disclosure to the customer concerning allocation standards and procedures is an appropriate and less burdensome substitute that provides the same kind of customer protection. Based on its review of the comments, the Commission has modified and clarified the final rule as appropriate.

II. Amendments to Commission Regulation 1.35(a–1)

The Commission is amending Regulation 1.35(a–1). Under Regulation 1.35(a–1)(5), Orders eligible for post-execution allocation, specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if certain requirements are met. The bunched order must be placed by an eligible account manager [11] on behalf of eligible customer accounts and must be handled in accordance with contract market rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41. In the discussion below, the Commission sets forth each of the components of its 1998 proposal, as summary of any pertinent comments received, and the manner in which the final rule addresses the issue.

A. Eligible Orders

1. Proposed Regulation 1.35(a–1)(5)(i).

The 1998 proposal required that bunched orders placed, executed, and allocated pursuant to the proposed regulation must be placed by an eligible account manager on behalf of consenting eligible customers as part of its management of a portfolio also containing instruments either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Act.

The consent requirement was based upon the belief that the eligible account owners should have the opportunity to consent affirmatively to participate in the post-execution allocation procedure. Further, the account manager should be the appropriate party to obtain that consent and to advise the FCM allocating the order so that the FCM could assure that allocations ere made only to the eligible accounts.

The portfolio requirement was based on the originally stated rationale for proposing that post-execution allocation be permitted, *i.e.,* to permit account managers to provide equivalent treatment to customers' accounts traded pursuant to strategies involving activity in both futures markets and non-futures markets. Where trades were executed only on domestic futures exchanges, the Commission stated that the account manager should be able to achieve equivalent treatment of customers' accounts while complying with either the existing customer account identifier requirements [12] or exchange average pricing rules. Nonetheless, the Commission requested comments concerning the placement of futures-only orders where the use of predetermined allocation formulas or average pricing would be insufficient to provide equivalent treatment to customers' accounts.

2. Comments Received

All commenters who addressed the issue of consent suggested that disclosure to the customer that orders would be allocated on a post-execution basis, rather than written consent, would be appropriate.[13] NFA and MFA

[6] ''Account Identification for Eligible Bunched Orders,'' 63 FR 695 (January 7, 1998).

[7] NFA, Managed Funds Association (''MFA''), Investment Company Institute (''ICI''), and the Association of the Bar of the City of New York (''NY Bar''). The NFA comment was derived after discussions among members of a subcommittee of NFA's Special Committee for the Review of a Multi-Tiered Regulatory Approach.

[8] Chicago Mercantile Exchange, Chicago Board of Trade (''CBT''), New York Mercantile Exchange (including Commodity Exchange, Inc.) (''NYMEX''), Coffee, Sugar & Cocoa Exchange, Inc. (''CSCE''), and New York Cotton Exchange (''NYCE'').

[9] Goldman, Sachs & Co. (''Goldman''), E D & F Man International (''Man'') FIMAT Futures USA, and Lehman Brothers, Inc. The latter two firms are not individually further referenced because their comment letters were written to support the NFA comment.

[10] The proposal required that eligible orders must be placed as part of the account manager's management of a portfolio also containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Act. This was intended to permit account managers handling portfolios involving futures and other instruments to allocate as to all components of the portfolio at the end of the day.

[11] The term ''account manager'' hereinafter is used to include investment advisers, commodity trading advisors (''CTA''), and other persons identified in paragraph 1.35(a–1)(5)(i) of the final regulation who would place orders eligible for post-execution allocation in accordance with the procedures set forth in the amendment.

[12] Regulation 1.35(a–1)(1) and (2)(i) or the predetermined allocation formula exceptions thereto as described in Appendix C to Part One of the Commission's regulations.

[13] NFA, ICI, and CBT. CME and NYMEX commented that the Commission should defer regulation of the relationship between the account manager and the account manager's customer to the account manager's primary regulator, but that, if the Commission does act in this area, it should require only disclosure. MFA commented that all customers, not just the most sophisticated, should

recommended that required disclosure should include specific customer protection information including, among other things, a description of any allocation methodology.[14]

All commenters addressing the portfolio requirement suggested that it be eliminated and that futures-only orders be permitted to be allocated on a post-execution basis.[15] Commenters represented that there are situations in which futures-only orders need to be allocated on a post-execution basis in order to attain fairness across accounts, thus satisfying the original rationale for the proposal. Included among the instances described by commenters where relief may be necessary were trading advisors who trade esoteric volatility spreads, who arbitrage, or who otherwise trade combinations of different futures and option contracts.[16] MFA and NYCE commented that relief may be necessary with regard to orders for which the account manager seeks to average price where the trading strategies are such that trading decisions made intraday are dependent upon prior trades or allocations. MFA and NYMEX stated that relief would be necessary in the case of orders for multiple accounts at multiple FCMs that are placed on more than one futures exchange. MFA identified a need for relief for orders for which a partial fill received at one exchange must be rounded out by an order in a related instrument at another exchange. Finally, NFA and MFA stated that relief was necessary when large orders are placed through a series of smaller orders in order to disguise the size of the order or to alleviate the impact of one order upon market prices.[17] Commenters also noted that average pricing is not a viable alternative in that it is not available at all exchanges and is not structured to handle partial fills.[18] Similarly, NFA and NY Bar noted that the use of predetermined allocation instructions may not be practicable given the complex and dynamic trading programs used by large, sophisticated advisors.

3. Final Regulation 1.35(a–1)(5)

After consideration of the comments, the Commission has concluded that it would be appropriate to delete the requirement for eligible account owners to consent to orders being allocated on a post-execution basis. First, the customers for whom orders could be placed and allocated pursuant to these procedures have previously been identified by the Commission as sufficiently sophisticated to monitor the results of post-execution allocations in their accounts.[19] Second, based in large part upon comments submitted by NFA and MFA, the Commission has included in the final regulation a requirement that the account manager disclose detailed information to its eligible customers. This information, discussed in detail in final rule paragraph 1.35(a–1)(5)(iii) below, is designed to apprise the account owner of allocation methodologies, fairness standards, availability of data for comparing returns on investment, and any proprietary accounts that may be included in the bunched order. These disclosures serve as an appropriate substitute for formal customer consent.

The Commission has also determined that it would be appropriate to delete the portfolio requirement. As previously stated, the overriding rationale for allowing post-execution allocation is to permit equivalent treatment of customers' accounts. The Commission believes that the commenters have sufficiently demonstrated that there are situations in which account managers placing futures-only bunched orders for eligible customers may need the relief afforded by post-execution allocation in order to achieve equivalent treatment of costumers' accounts. Further, the commenters have sufficiently demonstrated that there are also situations in which the use of either predetermined allocation instructions or average pricing may not be adequate to assure equitable treatment of customer accounts included in a bunched order.

B. Eligible Account Managers

1. Proposed Regulation 1.35(a–1)(5)(ii)

The 1998 proposal required that the account manager placing and/or directing the allocation of an eligible order must be one of the following which has been granted investment discretion with regard to eligible customer accounts: a CTA registered with the Commission pursuant to the Act; an investment adviser registered with the Securities and Exchange Commission (''SEC''), pursuant to the Investment Advisers Act of 1940; or a bank, insurance company, trust company, or savings and loan association subject to federal or state regulation.[20]

The Commission stated that these entities might be able to use the relief afforded by the eligible order procedures to achieve equivalent results for eligible customer accounts being traded pursuant to strategies involving trading activity in more that one market. Eligible account managers would be able to allocate futures and option trades in the same manner as they allocated trades on securities exchanges and over-the-counter markets.[21] Additionally, these entities' fiduciary activities were subject to oversight by various state or federal regulatory agencies.

2. Comments Received

Numerous commenters stated that foreign advisers play a significant role in U.S. financial markets [22] and suggested that the list of eligible account managers should be expanded to include foreign advisers.[23] MFA suggested including investment advisers exempt from SEC registration under Section 203(b)(3) of the Investment Advisers Act of 1940. Finally, CBT proposed that exchanges should be

be able to participate in bunched orders being allocated on a post-execution basis. Under these circumstances, disclosure would be adequate for the sophisticated customers but signed acknowledgements evidencing customer consent should be required from unsophisticated customers.

[14] These recommendations are discussed in detail below in paragraph 1.35(a–1)(5)(iii) of the final rule.

[15] NFA, MFA, CBT, NYMEX, CSCE, NYCE, and Goldman. NY Bar commented that futures-only orders placed on more than one futures exchange should be eligible for post-execution allocation.

[16] NFA, CBT, NYMEX, and CSCE.

[17] Additionally, Goldman commented that account managers executing futures-only orders have the same need to respond rapidly to market movements and to use trading models and systems that are complex and may involve numerous adjustments throughout the course of a single trading day. As a result, it may often be necessary for an account manager, particularly in fast moving markets, to be able to execute orders instantly and to allocate the fills after completion of the transaction.

[18] NFA, NY Bar, NYMEX, CSCE, NYCE, and Goldman.

[19] 63 FR 695, 700. The eligible customers are identified and discussed below in paragraph 1.35(a–1)(5)(ii) of the final rule.

[20] On the basis of comments to the 1993 proposal, the 1998 proposal included CTAs as eligible account managers. Otherwise, the group of entities proposed to be eligible account managers was identical to that originally found in the 1993 proposal.

[21] *See, e.g.*, Interpretation 88–3 of New York Stock Exchange (''NYSE'') Rule 410(a)(3): ''Member organizations may accept block orders and permit investment advisors to make allocations on such orders to customers and remain in compliance with Rule 410(a)(3) provided that the organizations receive specific account designations or customer names by the end of the business day.''

[22] NFA, CBT, CSCE, NYCE, and Goldman.

[23] NFA, MFA, NYCE, Man and CSCE (foreign advisors registered with, or exempt from, Commission registration, regulated in the advisor's home jurisdiction, and providing advice to non-U.S. persons), CBT (registered with the Commission), and Goldman (operating pursuant to Regulation 30.10 exemptions, located in countries that have received Regulation 30.10 exemptions, or otherwise).

afforded the flexibility to expand the relief, on a case-by-case basis, to other account mangers who are adequately regulated and subject to fiduciary liability.

3. Final Regulation 1.35(a–1)(5)(i)

After consideration of the comments, the Commission believes that it is appropriate to expand the list of eligible account managers to include foreign advisers who provide advice solely to foreign persons.[24] However, the Commission remains concerned that foreign advisers are not subject to U.S. regulation and could use the ability to allocate orders among customers after execution as a vehicle to engage in fraud, money laundering or other abusive financial schemes. Thus, the Commission has determined to include only those foreign advisers who are subject to regulation by a foreign regulator or self-regulatory organization (''SRO'') that either (1) operates under a regulatory framework that has been found by the Commission to be comparable to that in the United States and has been issued a Commission Order under Regulation 30.10 or (2) has entered into a Memorandum of Understanding (''MOU'') or other arrangement for cooperative enforcement and information sharing with the Commission (hereafter referred to as a ''foreign authority'').

In addition, as discussed below in final rule paragraph 1.35(a–1)(5)(iv), the Commission is adding a certification requirement that must be met in order for a foreign adviser to be an eligible account manager. The foreign authority must certify that (1) the foreign adviser's activities are subject to regulation by that foreign authority and (2) the foreign authority will provide, upon request of the Commission or Department of Justice, information that relates to the foreign adviser's compliance with this rule. The Commission believes that restricting foreign advisers who may be eligible account managers in this manner, in combination with the certification requirement, will help facilitate the detection and deterrence of fraud, money laundering or other abusive financial schemes.

The Commission is not including as eligible account managers investment advisers exempt from SEC registration under Section 203(b)(3) of the Investment Advisers Act of 1940 or CTAs exempt from Commission registration under Section 4m(1) of the Act. These entities are not examined in the ordinary course of audits conducted by the SEC or NFA, respectively.

C. Eligible Customers

1. Proposed Regulation 1.35(a–1)(5)(iii)

(a). 1.35(a–1)(5)(iii)(A)—Types of Customers. The 1998 proposal provided that eligible orders could be placed on behalf of, and allocated to, accounts owned by an identified group of entities (''eligible customers'') which has consented in advance and in writing to the account manager that orders could be placed, executed, and allocated in accordance with the eligible order procedures.[25] Except for the exclusion of sole proprietorships, natural persons, floor brokers, floor traders, and self-directed employee benefit plans, the group of eligible customers was substantially similar to those entities defined as ''eligible participants'' for purposes of Part 36—Exemption of section 4(c) Contract Market Transactions, of the Commission's regulations.[26] Having previously considered this group of entities and determined that they are eligible to participate both in exempt transactions and in swaps, the Commission determined that they are sufficiently sophisticated to monitor the results of any post-execution allocations in their accounts.

Accounts owned by sole proprietorships, floor brokers, floor traders, natural persons, and self-directed employee benefit plans were not included as eligible customers.

(b). 1.35(a–1)(5)(iii)(B)—Proprietary Interest. The 1998 proposal provided that the following persons, or any combination thereof, could not have an interest of ten percent or greater in any account that received any part of an eligible order:

(i) the account manager,

(ii) the futures commission merchant allocating the order;

(iii) Any general partner, officer, director, or owner of ten percent or more of the equity interest in the account manager or the futures commission merchant allocating the order;

(iv) Any employee, associated person, or limited partner of the account manager or the futures commission merchant allocating the order who affects or supervises the handling of the order;

(v) Any business affiliate that, directly or indirectly, controls, is controlled by, or is under common control with, the account manager or the futures commission merchant allocating the order, or

(vi) Any spouse, parent, sibling, or child of the foregoing person.

The limitation to less than ten percent ownership interests in any account that received any part of an eligible order was intended to balance the potential for misallocation with the recognition that there are situations where proprietary accounts should be permitted in a bounded order. For example, the Commission was aware that proprietary accounts might properly be included with customer accounts in a bunched order where the account manager had ''seed'' money invested in an account or where the account manager invested in an account in order to attract other investors. In addition, a complete prohibition on any interest in an included account would exclude certain publicly owned organizations from becoming eligible customers and thus would result in unfair customer treatment.

2. Comments Received

(a) 1.35(a–1)(5)(iii)(A)—Types of Customers. All commenters addressing eligible customers suggested that the list be expanded to include natural persons.[27] CBT and CSCE commented that the list should be expanded to include floor brokers and traders. MFA suggested that all eligibility restrictions should be eliminated.

Several commenters also suggested that the Commission should not create yet another definition of ''sophisticated customer.''[28] Thus, CME and CBT proposed that the list of eligible customers should be consistent with the list of ''eligible participants'' in Part 36; CME, CBT, and MFA proposed that it should be consistent with the list of ''eligible swap participants'' in Part 35; and MFA proposed that it should be

[24] A foreign advisor who places orders on U.S. futures exchanges for U.S. persons would be required to register as a CTA and, thus, would be included as an eligible account manager when placing bunched orders for eligible customers.

[25] The issue of customer consent was discussed above. As noted, the Commission is eliminating the consent requirement, but including disclosure requirements to assure the customer is apprised of, among other things, allocation methodology and fairness standards.

[26] As the Commission stated in promulgating the final rules for Part 36, the list of ''eligible participants'' was modeled on the list of ''appropriate persons'' set forth in Section 4(c)(3)(A) through (J) of the Act and on the definition of ''eligible swap participant'' under Part 35 of the Commission's regulations. 60 FR 51328 (October 2, 1995).

[27] NYCE and Man. NFA, CME, CBT, NYMEX, and CSCE commented that natural person as defined in Parts 35 and 36 should be included. MFA stated that natural persons as defined in Part 35 and Regulation 4.7 should be included. NY Bar commented that natural persons meeting the ''qualified eligible client'' criteria defined in Regulation 4.7(b)(1)(ii)(B) should be included. Goldman commented that natural persons meeting the ''qualified eligible participant'' criteria defined in Regulation 4.7 should be included.

[28] NFA, MFA, NY Bar, CME, NYMEX, and CSCE.

consistent with ''qualified eligible client'' under Regulation 4.7.[29]

(b) 1.35(a–1)(5)(iii)(B)—Propriety Interest. Most commenters believed the provision limiting proprietary interest to an interest of less than ten percent was overly restrictive and should be eliminated.[30] NFA and MFA stated that many institutional customers desire that their account managers trade their own funds just like the customers' funds and may, according to MFA, require that the account manger have a significant proprietary interest. It was noted that applying a percentage test to determine eligibility to bunch and allocate orders could prove administratively burdensome.[31] MFA and Goldman stated that the account manager could be subject to potential liability because his or her interest may fluctuate in size over time. ICI commented that it would be very difficult, and in some cases impossible, for an account manager to determine ownership interest and monitor compliance with the ten-percent limitation.[32]

NFA commented that, if the allocation procedures satisfy certain core fairness principles, then it should not matter that proprietary accounts are included in the bunched order. MFA commented that, if the allocation methodology were fundamentally fair, non-preferential, and verifiable, it would be fair for all orders allocated by that methodology. MFA further stated that requiring the account manager to trade a proprietary account outside the bunched order would greatly diminish the effectiveness of the audit process and create complexity and opportunities for misallocations in monitoring, auditing and implementing the separate allocation procedures.[33]

3. Final Regulation 1.35(a–1)(5)(ii)

After consideration of the comments, the Commission has determined to modify the 1998 proposal's list of eligible customers to make it completely consistent with the Part 36 list of ''eligible participants.''[34] Thus, the Commission is including as eligible customers natural persons, subject to the Part 36 total asset requirement, and floor brokers and traders.[35] Likewise, the Commission is removing the 1998 proposal's restriction of self-directed corporate qualified pension, profit sharing, or stock bonus plans subject to Title 1 of ERISA for those plans that satisfy the ''eligible participant'' criteria of Part 36. The Commission believes that these entities are generally capable of understanding bunched order and post-execution allocation procedures and risks. Further, in order to assist the eligible customers in this understanding, the Commission is requiring that the account manager disclose certain specific information to them. These disclosure requirements, discussed in detail in final rule paragraph 1.35(a–1)(5)(iii) below, are designed to apprise the account owner of allocation methodologies, fairness standards, availability of data for comparing returns on investment, and any proprietary accounts that may be included in the bunched order.

The Commission has also determined that it is appropriate to eliminate the less than ten percent restriction on proprietary interest that would have been imposed upon the account manager, the FCM allocating the order, and other listed entities. The Commission is aware that the proposed limitation does not exist in other markets and agrees with the commenters that it would be administratively burdensome and difficult to manage and to enforce. Among other things, the account manager would have a difficult time determining the level of interest held by the total group of possible participants who would be subject to the limitation. That level of interest also would be subject to fluctuation, would require constant monitoring, and could result in inadvertent violations, *e.g.*, when redemption in a fund occurred. The Commission also is aware that the eligible customers may prefer to invest with an account manager who has a significant proprietary interest in the trading activity, *i.e.*, an account manager who puts his or her money at risk along with that of the customer. Finally, the Commission agrees with the commenters who stated that, if the allocation procedures are fair, they remain so even if the account manager has an interest in an included account.

Therefore, the proposed interest limitations have been deleted. In addition, eligible account managers have been included in the list of eligible customers for whom orders may be placed and allocated on a post-execution basis. In order to assure that an eligible customer is aware that an account in which the account manager has an interest may be included with the customer's account in the bunched order, the Commission is requiring, as discussed below, that the account manager disclose his or her policies with regard to this issue.

D. Disclosure—Final Regulation 1.35(a–1)(5)(iii)

As previously noted, the 1998 proposal required that the customer consent, in writing to the use of eligible order procedures, and the proposal placed a less than ten percent interest limitation on proprietary orders that could be included in the bunched order. Because the Commission has concluded that the customer protection intended to be provided by these proposed requirements can be provided as effectively through detailed disclosure, the Commission has determined to substitute disclosure requirements for the proposal's consent requirement and proprietary interest limitation.

These disclosure requirements are based upon comments submitted by NFA and MFA both of which stated that strengthened customer protection could be attained by expanding disclosure requirements. Among other things, NFA proposed that the regulation should require that eligible account managers describe to their customers, in general

[29] NY Bar recommended that the Commission eliminate the fixed total asset requirement applied to commodity pools in order for the pools to meet the eligible customer criteria. The fixed asset level would not address situations where the pool initially met the requirement but subsequently fell to a lower asset level because of investor redemption or trading losses. In the alternative, NY Bar commented that the fixed asset level requirement should be applied only at the inception of trading.

[30] NFA, MFA, NYCE, and Goldman, NY Bar commented that proprietary interest in excess of ten percent should be permitted so long as it is disclosed. CBT commented that the limitation should be clarified to state that an account would not be disqualified from eligibility if from time to time the ten-percent interest test were exceeded on a temporary or marginal basis. This would permit some limited flexibility as the limitation is applied to commodity pool operators or CTAs setting up new pools or liquidating old pools.

[31] NFA, MFA and Goldman.

[32] ICI recommended that interests in registered investment companies be excluded from the limitation or, in the alternative, that it be acceptable for the account manager to certify that it reasonably believes it is in compliance with the requirements of the regulation.

[33] MFA stated that requiring the limitation on proprietary interest could provide an opportunity for dishonest account managers to allocate fraudulently by altering the extent of their proprietary investment or otherwise changing the group of accounts that trade within, rather than outside, the bunched order. Goldman commented that preferential allocations to accounts in which the account manager has a proprietary interest would be more readily apparent and therefore more easily detected if the proprietary accounts were included in the bunched order.

[34] As previously noted, the Commission has considered this group of entities and determined that they are eligible to participate both in transaction under the Part 36 pilot program and in swaps and believes that they are sufficiently sophisticated to monitor the results of any post-execution allocations in their accounts.

[35] With regard to allocations to accounts owned by natural persons, the Commission believes that the various increased standards applicable to the manner in which account managers will be required to handle these accounts should mitigate the Commission's previously stated concerns.

terms, their basic approach to allocating trades among participants in a particular trading program. NFA stated that the account manager should be required to represent to eligible customers that it regularly reviews each account to assure that the allocation methodology has been fair and equitable and that it will document the internal procedures and results of its regular analysis and maintain these procedures and results as firm records.[30]

MFA commented that the account manager should be required to disclose to the customer the nature of its allocation methodology and the fairness standard required of the methodology, the ability of the customer to request confirmation regarding the operation of the methodology, and the extent to which the account manager includes accounts in which it has an interest in the bunched order. According to MFA, requiring that disclosure to the customer include this information would assure that the customer would be able to provide informed consent to participation in the bunched order and fair allocation procedures.

The Commission has drawn upon these NFA and MFA comments to craft the disclosure requirements found in the final regulation and described below. The Commission believes that compliance with these requirements will assure that the customer is armed with adequate knowledge of the bunched order and post-execution allocation procedures as they apply to his or her account and thus will have an enhanced ability effectively to monitor account activity. Thus, these disclosure requirements are an appropriate substitute for the written customer consent requirement and less than ten-percent proprietary interest limitation.

Before placing the initial order eligible for post-execution allocation, the account manager must disclose the following to each of its customers to be subject to post-execution allocation:

(i) The general nature of the allocation methodology the account manager will use;

(ii) The standard by which the account manager will judge the fairness of allocations;

(iii) The ability of the customer to review summary or composite data sufficient for that customer to compare its results with those of other relevant customers;[37] and

(iv) Whether accounts in which the account manager may have any interest may be included with customer orders in orders eligible for post-execution allocation.

E. Account Certification

1. Proposed Regulation 1.35(a–1)(5)(iv)

In 1998 proposal required that, before placing the initial eligible order, the account manager certify in writing to each FCM executing and/or allocating any part of the order that the account manager was aware of the eligible order provisions and would comply with those provisions. Further, the account manager was required to provide each FCM allocating the order with a list of eligible futures accounts.

The certification requirement was designed to assure that the account manager, who has overall responsibility for compliance with the eligible order provisions, was cognizant of, and would comply with, the provisions. The certification requirement would need to be made only once to each applicable FCM, and not on an order-by-order basis.[38] The extent of the account manager's compliance with these requirements would be determined during audits and on a for-cause basis.

2. Comments Received

Commenters addressing the certification issue generally made two suggestions. First, the certification should be made only to the clearing FCM;[39] and second, the certification should remain in effect unless revoked.[40] With regard to the requirement that the account manager provided a list of eligible futures accounts, ICI commented that, rather than requiring a cumulative list, the Commission should permit an account manager to provide the FCM with eligibility information on an account either when it is opened or once a determination is made that it is an eligible account for purposes of the regulation.[41]

3. Final Regulation 1.35(a–1)(5)(iv)

After consideration of the comments received, the Commission has determined that the account manager certification need be provided only to the FCM clearing any part of an order eligible for post-execution allocation to the ultimate customers. Further, this certification, once made, will continue in effect until the account manager revokes it or the FCM is otherwise notified of a change.

With regard to the identification of the eligible customer accounts, the Commission agrees that a list of the accounts need not be required. Rather, the Commission has determined to require only that the account manager must identify these accounts to the FCM clearing any part of an order eligible for post-execution allocation. Identification may be accomplished by list; by notice at the opening of the account; by letter if the determination is made after the account is open; or by other, similar method. The Commission continues to believe that the requirement that the account manager identify the eligible customer accounts to the FCM should enable the FCM to insure that allocations are made only to those eligible customer accounts.[42]

Finally, in order to facilitate compliance with the requirements of this rule, as well as to facilitate the detection and deterrence of fraud, money laundering and other abusive

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[30] As discussed below, NFA strongly supported the proposed requirement that each account manager make available data sufficient for customers to compare their results with those of other relevant customers.

[37] Of course, the account manager would be expected to disclose the customer's ability to compare its results with those of similarly traded accounts in which the account manager has an interest, if such accounts are included. In those circumstances, the accounts in which the account manager has an interest would be accounts ''of other relevant customers.''

[38] Where the account manager places orders directly with a floor broker rather than an executing FCM, the certification would have to be filed only with each FCM allocating any part of an eligible order and not with the floor broker.

[39] NFA, NYMEX, and Goldman, MFA suggested that the certification be made either to the clearing FCM or to the NFA. NFA also commented that the term ''represent'' should be used in place of ''certify.''

[40] NFA, CBT, and NYMEX.

[41] Man commented that the failure of an account manager to inform the FCM of any deviations or changes to the list of eligible accounts, as well as the potentially large number of accounts which may be on the list, could result in potential errors and delays in trade processing. The responsibility for fair, non-preferential allocation of orders among accounts is that of the account manager and not the FCM. Obviously, whether or not a list was provided to the FCM, an FCM has an ongoing obligation to inquire if there are appearances of preferential allocations. Thus, Man proposed that the requirement to provide a list of eligible futures accounts to the FCM not be required since it serves no meaningful purpose.

[42] The account manager must notify the clearing FCM when the account manager has notice that a previously identified eligible account is no longer eligible to be included in bunched orders allocated on a post-execution basis. However, if the account manager has a reasonable basis to believe that the account will regain its eligibility status within 10 business days, the account manager need not notify the FCM and may continue to treat that account as an eligible account. This timeframe is consistent with the maximum of 10 business days which may be granted by the Commission, in its discretion, to allow an FCM or IB to achieve compliance with the § 1.17 net capital requirements without having to transfer accounts and cease doing business. Thus, although a commodity pool would no longer be an eligible account if its total assets fell below the $5,000,000 threshold because of investor redemptions or trading losses, the account manager may continue to treat that commodity pool as an eligible customer account if the account manager has a reasonable basis to believe that the reduction in assets is temporary and that the commodity pool's total assets will be increased to the $5,000,000 within 10 business days.

financial schemes, the Commission has determined that an additional certification requirement is appropriate. Foreign advisers must also provide to each FCM clearing any part of an order eligible for post-execution allocation a written certification from a foreign authority that (1) the foreign adviser's activities are subject to regulation by that foreign authority and (2) the foreign authority will provide, upon request of the Commission or Department of Justice, information that relates to the foreign adviser's compliance with this rule.

F. Allocation

1. Proposed Regulation 1.35(a–1)(5)(v)

The 1998 proposal required that the account manager and the clearing FCM allocate the order to eligible participating customer accounts prior to the end of the day the order is executed. Further, the proposal required that allocations be fair and nonpreferential, taking into account the effect on each relevant portfolio in the bunched order. These allocation requirements were designed to assure that allocations were made fairly, in a timely manner, and only to eligible customer accounts.

As stated in the 1998 proposal, although the account manager has the responsibility for employing a system that results in fair, equitable, and non-preferential allocations, the FCM does assume some responsibility with regard to the fairness of the allocations.[43] If the FCM were directed to allocate eligible orders to previously unidentified accounts or became aware of what appeared to be preferential allocations, the FCM would be required to make a reasonable inquiry and, if appropriate, to refer the matter to the appropriate regulatory authority.

2. Comments Received

Among the comments received that addressed the allocation requirements, NFA stated that it would be helpful to indicate that account managers should provide allocation information as soon as practicable after the entire transaction is executed but no later than the end of the day. Further, NFA suggested that the Commission clarify that ''end of the day'' might be defined by certain contract market or FCM operational timetables.[44] MFA commented that order allocation should be required no later than the deadline for the submission of trade data established by the exchange on which the trade is made.

Two commenters expressed concerns regarding allocation responsibilities proposed to be imposed on the FCMs. NY Bar commented that the requirement that the FCM conduct reasonable inquiry and refer to regulatory authorities any situations in which an order allocation formula appears to be abandoned or significantly departed from poses an unreasonable burden upon the FCM. In a similar vein, CBT commented that it is unnecessary to require the FCMs to have responsibilities above and beyond those already placed on them to ensure fair and equitable treatment of their customers by Regulation 166.3, which requires that FCMs diligently supervise the handling of customer accounts.

Finally, NFA suggested that among the representations that the eligible account manager should be required to make to his or her customers is that the allocation methodology will be: (1) Non-preferential, so that no account or group of accounts receive consistently favorable or unfavorable treatment; (2) sufficiently objective and specific that the appropriate allocation for a given trade can be verified in an independent audit; and (3) consistently applied.

3. Final Regulation 1.35(a–1)(5)(v)

After consideration of the comments received, the Commission has determined to modify the timeliness and fairness standards and to add as allocation requirements the NFA's proposed representations regarding the allocation methodology. The requirement that allocations must be made only to the accounts of eligible customers is being retained.

With regard to the timeliness of the allocations, the Commission is revising the standard to require that allocations must be made as soon as practicable after the entire transaction is executed, but no later than the end of the day the order is executed.[45] The Commission is aware of no reason to postpone the allocations until the end of the day in situations where the results of the entire transaction are already known and fairness to the included accounts can thus be attained without further delay. Although it is no longer separately stated in this paragraph, the Commission continues to believe that the definition of ''end of the day'' for purposes of post-execution allocation may be specified by exchange rule. That provision was removed as an allocation requirement because it was redundant. Paragraph 1.35(a–1)(5) of the final rule already provides that orders eligible for post-execution allocation must be handled in accordance with exchange rules submitted to the Commission pursuant to Section 5a(a)(12)(A) and Regulation 1.41.

The Commission has modified the basic fairness standard of the allocation requirements in two areas. First, the standard in the final rule requires that the allocations must be fair and equitable and that no account or group of accounts may receive consistently favorable or unfavorable treatment.[46] The Commission is aware that the existence of preferential allocations is best determined over a period of time and not on the basis of individual allocations.[47]

Second, since the requirement that there must be a portfolio containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Act has been deleted, the fairness standard no longer refers to ''taking into the account the effect on each relevant portfolio in the bunched order.'' Nonetheless, even without a portfolio requirement, the Commission expects that audits determining the fairness of allocations among accounts will consider all instruments and all transactions relevant to the accounts being audited.

With respect to the account manager's allocation methodology, the Commission has determined to include as an allocation requirement NFA's proposed required representations regarding that methodology. That is, the

[43] As discussed herein, FCM responsibilities regarding the fairness of allocations are those of the clearing FCM.

[44] NFA encouraged the Commission to require that eligible account managers disclose to their customers that they will provide allocation information as soon as practicable after an entire transaction is executed, but no later than as required by certain exchange or FCM operational timetables.

[45] As used herein, the term ''entire transaction'' includes the bunched futures and/or option order(s) and all related transactions executed in all markets for the included accounts.

[46] This requirement is consistent with allocation responsibilities imposed upon banks. Banking regulators require that banks effecting securities transactions for customers establish written policies and procedures for the fair and equitable allocation of securities and prices to the accounts when orders are placed for the same security. *See* 12 C.F.R. § 208.24(g)(2) (1998) (requiring such procedures for state member banks); 12 C.F.R. § 12.7(a)(2) (1998) (requiring such procedures for national banks).

[47] The Commission is also aware that an account in which the account manager has an interest could, on a given day, even using random allocation methodology, receive better allocations than one or more of the included customer accounts. The Commission would not, absent evidence to the contrary, find that this allocation violated the fairness standard so long as the account manager could demonstrate that the results were consistent with the allocation methodology disclosed by the account manager and so long as the favorable allocation is not representative of a pattern of preferential allocation.

allocation standard in the final rule will include a requirement that the account manager's allocation methodology must be (1) sufficiently objective and specific that the allocation for a given trade can be verified in an independent audit and (2) consistently applied.

Finally, the requirement that allocations must be made only to the accounts of eligible customers and must be made in a fair and equitable manner remains as stated in the proposal. The account manager has the responsibility for employing a system that results in fair, equitable, and non-preferential allocations. The FCM generally has the responsibility for complying with instructions from the account manager. The FCM also has additional responsibilities with regard to the allocations. If the account manager were to direct the allocation of fills into an account that has not been identified as an eligible account or if the FCM becomes aware of what appear to be preferential allocations, the FCM is required to make a reasonable inquiry and, if appropriate, to refer the matter to the appropriate regulatory authority, *i.e.*, the Commission, NFA, or the FCM's designated self regulatory organization (''DSRO''). In addition, the FCM must act consistently with its obligations under Regulation 166.3 to supervise diligently the handling of its customer accounts.

G. Recordkeeping

1. Proposed Regulation 1.35(a–1)(5)(vi)

The 1998 proposal required that each eligible order and the account manager placing the order be identified on the order tickets at the time of placement. Each transaction resulting from an eligible order was required to be identified on contract market trade registers, other computerized trade practice surveillance records, and confirmation statements provided to eligible customer accounts. These requirements were designed to assure the existence of a complete audit trail from order placement through order allocation.

The 1998 proposal required that each account manager must make available, upon request of a representative of the Commission or the United States Department of Justice, customer consent documents and records reflecting futures and option transactions, other transactions executed pursuant to the portfolio management strategy, and any other records that would identify the management strategy and relate to, or reflect upon, the fairness of the allocations. Finally, it required that each account manager must make available for review, upon request of an eligible customer, data sufficient for that customer to compare its results with those of other relevant customers, prepared so as not to disclose the identity of individual account holders. The description of the requirement in terms of data was intended to permit the use of established methods used by sophisticated institutional investors in securities to measure and to compare performance. The comparison data could be prepared without requiring the disclosure of the identity of individual account holders.

2. Comments Received

With respect to the requirement that the eligible order and the account manager placing the order must be identified on the office and floor order tickets, NFA suggested that the account manager be identified by code or other appropriate identifier, and CBT questioned the necessity of designating the account manager on the original order tickets. MFA and CBT suggested that the rule should permit the use of a group identifier with respect to the group of accounts to be allocated in the bunched order.[48] MFA and CBT were opposed to the requirement that eligible order transactions be identified on trade registers and other computerized trade practice surveillance records.[49] Several commenters suggested that the requirement that trades be identified on confirmation statements provided to the customer accounts should be deleted.[50] Most of those commenters stated that such a requirement was redundant and unnecessary once the customer has been informed that orders for his or her account would be placed and allocated pursuant to the eligible order procedures.

MFA addressed the requirement that the account manager make certain information available, upon request, to the Commission or the Department of Justice. MFA objected to the requirement that the account manager maintain records demonstrating the relationship between the futures and other transactions. It contended that the eligible order relief should be available without regard to whether there were any other transactions and that the records demonstrating any trading strategy could cause unnecessary disclosure of proprietary trading strategies and procedures. MFA further commented that the rule should be narrowed to require retention only of information essential to the determination of the appropriateness of the allocations made.

Numerous commenters addressed the requirement that comparative data be made available to the customer so that he or she could compare results with those of other relevant customers. NYCE supported the requirement as stated.[51] NFA supported it as modified to define the data required to be made available as ''performance'' data. ICI supported it as modified to define the data as ''aggregated'' or ''composite'' information. MFA recommended that the rule not require disclosure of comparative account information of other customers, but rather disclosure of summary information for the accounts for which such orders are made. NY Bar and CME recommended that the requirement be deleted.[52]

3. Final Regulation 1.35(a–1)(5)(vi)

The Commission has determined to make several revisions to the proposed recordkeeping requirements. In order to provide for a more complete audit trail and consistent with SEC recordkeeping requirements applicable to investment advisers, the Commission is adding a requirement that the account manager, prior to placing the order, create and timestamp a document reflecting the terms of the order and the expected allocation thereof (''order origination document'').[53] Any subsequent decision

[48] In its comment objecting to the proposal's requirement that an eligible order must be identified throughout the execution, clearing, and confirmation procedures, MFA stated that the account manager should be required to identify the orders as eligible orders at the time of entry and on its trade blotter and allocation sheets.

[49] MFA stated that the cost of requiring compliance would be large without achieving any identifiable separate regulatory objective. CBT stated that the requirement would result in excessive cost to the industry and that the benefit of this type of information is questionable.

[50] NFA, MFA, CBT, Goldman, and Man.

[51] NYCE further commented that the data should also be required to be made available to regulatory authorities.

[52] NY Bar recommended, as an alternative, requiring the availability of comparable trading data for audit by the NFA. CME commented that the account manager's primary regulator should impose such a requirement if it determines that such a requirement is necessary.

[53] Among the books and records to be maintained by investment advisers registered or required to be registered under section 204 of the Investment Advisers Act of 1940 are the following:

A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and or any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders

to alter the included accounts, proposed allocation, or other terms of the order would likewise be required to be documented and timestamped. The Commission is specifying the information that must be retained, not the type or format of the document on which such information must be recorded. For instance, if an order and its allocation methodology were generated based upon a computer program, a copy of the computer-timed output document might be adequate. If an order were to be allocated according to a standardized methodology described in a pre-existing document, the timestamped order origination document need only reflect the terms of the order and a reference to the allocation methodology in that document, or to the document, as appropriate. The basic requirement is that the order origination document, which must be retained pursuant to Regulation 1.31, must assist an auditor in tracing the allocations attributable to a specific transaction by documenting the origin of that transaction.[54]

With regard to the information required to be identified on the office and/or floor order tickets, the Commission agrees with the commenters that a group identifier or other code would be adequate, so long as the order is identified as an order eligible for post-execution. Thus, the Commission has deleted the requirement that the account manager placing the order must be identified on the order tickets. However, in keeping with the Commission's intention to enhance the ability of an auditor to trace the allocations attributable to a specific transaction, the Commission is also requiring that the group identifier or other code on each order ticket relate back to the specific order origination document described above.[55]

The Commission is retaining the proposed requirement that each transaction executed based upon an order eligible for post-execution allocation be identified on contract market trade registers and other computerized trade practice surveillance records. The Commission continues to believe that this is an important enhancement to the audit trail in that it would permit an order to be tracked throughout its processing.[56] However, the Commission agrees with the commenters that the proposed requirement that the transactions must also be identified on confirmation statements provided to eligible customer accounts is unnecessary. Once the eligible customers have been informed that orders for their accounts will be placed and allocated as orders eligible for post-execution allocation, the trades need not be identified separately on confirmation statements.

The proposed requirement that records be made available, upon request, to the Commission and Department of Justice has been retained, but modified to comport with other revisions to the 1998 proposal. The reference to consent documents has been revised to refer to disclosure documents, and the reference to the portfolio management strategy has been deleted. The requirement that records be made available to a customer for that customer to compare its results with those of other relevant customers has also been retained, but modified. As suggested by commenters, the provision specifies ''summary'' or ''composite'' data. The Commission believes that this revision should allay concerns that the disclosure of comparative account information might lead to the identification of a particular customer.[57]

H. Contract Market Rule Enforcement Programs

1. Proposed Regulation 1.35(a–1)(5)(vii)

The 1998 proposal required that, as part of its rule enforcement program, each contract market that adopted rules allowing the placement of eligible orders must adopt audit procedures to determine compliance with certain account certification, allocation, and recordkeeping requirements.

This surveillance requirement, to be met by the exchange as part of its routine oversight of member firms, was deemed necessary to deter possible unlawful activity and to ensure that an adequate audit trail existed for eligible orders. Under the proposal, the contract market was required to adopt audit procedures to determine compliance with (1) the certification requirements; (2) the requirement that orders must be allocated to eligible accounts by the end of the day; and (3) the requirement that eligible orders must be identified on order tickets, trade registers, other surveillance records, and customer confirmation statements.

2. Comments Received

CBT and CSCE commented adversely on the audit procedures proposed to be required by exchanges. CBT commented that the responsibility for the surveillance of account managers seems to be appropriately placed on the NFA rather than on the exchange on which the trades are transacted. Thus, CBT argued that it would be duplicative and unduly burdensome to require exchanges to conduct specific regulatory reviews of these types of accounts as part of the regulations. CSCE commented that many of the areas required to be reviewed pertained to back-office FCM activities, which would fall within the scope of the review conducted by the FCM's DSRO and which would not be part of each exchange's rule enforcement program. Thus, according to CSCE, the only areas that would be subject to audit under an exchange rule enforcement program would be the requirement that eligible order transactions be identified on floor orders, exchange trade registers and other trade practice surveillance records.

3. Final Regulation 1.35(a–1)(5)(vii)

The Commission continues to believe that oversight of these areas should be required. However, in response to the comments, the Commission has

entered pursuant to the exercise of discretionary power shall be so designated. 17 C.F.R. § 275.204–2(a)(3) (1997).

Registered investment companies are also required to maintain records. Section 31(a) of the Investment Company Act of 1940 and Rule 31a–1(b)(5) thereunder require that registered investment companies maintain a current record of each brokerage order for securities, whether executed or unexecuted, showing, among other things, the terms and conditions of the order, the time of order entry or cancellation and the time of receipt of report of execution. 17 C.F.R. § 270.31a–1(b)(5) (1997). Rule 31a–1(b)(6) applies the Rule 31a–1(b)(5) recordkeeping requirements to all other portfolio purchases or sales, such as futures transactions. 17 C.F.R. § 270.31a–1(b)(6) (1997).

With regard to permissible procedures for bunching orders and allocating trades in securities, including the preparation of allocation documentation prior to order placement, *see* SMC Capital, Inc. SEC no-action letter (available September 5, 1995) and Pretzel & Stouffer SEC no-action letter (available December 1, 1995). Finally, as previously noted, MFA commented that the account manager should be required to identify orders eligible for post-execution as such at the time of entry and on its trade blotter and allocation sheets. *See* n. 48.

[54] Of course, the account manager must create and retain a record reflecting the participation of all accounts in each order eligible for post-execution allocation, including the allocations.

[55] If the account manager places multiple orders to satisfy the investment criteria documented on the order origination document, each of the order tickets must contain the group identifier or other code that relates back to that specific order origination document.

[56] Because of the potential for misallocation, each exchange should routinely monitor the placement, execution, and allocation of orders eligible for post-execution allocation as part of its trade practice surveillance program.

[57] Additionally, as previously stated, the account manager would be required to disclose to a customer that customer's ability to review composite or summary data sufficient for that customer to compare its results with those of similarly traded customers, including similarly traded accounts in which the account manager has an interest. Thus, the specific amount and extent of information to be provided could be determined by agreement between the account manager and his or her customer.

modified the responsibilities identified by the 1998 proposal as part of an exchange's rule enforcement program. Audit of the recordkeeping requirements pertaining to data on exchange computerized records and entry data required on order tickets will remain as a responsibility of an exchange's rule enforcement program.[58] Audit of certain of the certification, allocation, and recordkeeping requirements that pertain to the FCM will be a responsibility of the DSRO of the member firm. Thus, during its audit of a member firm, the DSRO will be required to determine that (1) the account manager's certification document is on file; (2) eligible customer accounts are identified; (3) allocations are made to eligible customer accounts; and (4) allocations are made by the end of the day the order is executed. Routine audit of the requirements that pertain to the account manager, such as fairness and adequacy of disclosure, remains the responsibility of the regulatory entity required to perform oversight of the account manager. The NFA, for instance, has the responsibility to perform routine oversight over member CTAs. Of course, the Commission has the authority to determine compliance with all of the rule's requirements and to conduct investigations as appropriate.

III. Conclusion

Subject to certain core regulatory protections, the Commission's final regulation permits certain regulated account managers to place orders for a defined group of eligible customers without providing specific customer account identifiers at the time of order placement or upon report of execution.[59] The commission previously has identified the listed customers as eligible to enter Part 35 swap agreements or to execute Part 36 contract market transactions. The account managers would be required to allocate the order as soon as practicable after the entire transaction is executed, but no later than the end of the day.[60] As discussed below, in addition to the customer safeguards being imposed, significant existing and new audit trail and recordkeeping requirements would remain applicable.[61]

Under the regulation, the account manager must disclose to the customer that orders may be placed, executed, and allocated as orders eligible for post-execution allocation. The account manager also must disclose the general nature of the allocation methodology that will be used and the standard by which the account manager will judge the fairness of the allocations. Allocations must be fair and equitable, so that no account or group of accounts may receive consistently favorable or unfavorable treatment.[62] The allocation methodology must be consistently applied and must be sufficiently objective and specific so that the appropriate allocation for a given trade can be verified in an independent audit.[63]

The account manager would be required to maintain records that would, among other things, reflect futures and option transactions and that would relate to, or reflect upon, the fairness of the allocations. These records would be available, upon request, to the Commission or the Department of Justice. The account manager also would be required to provide the customer, upon request, with summary or composite data sufficient for that customer to compare results with those of other similarly traded customers. The account manager would be required to disclose to the customer that customer's ability to obtain and review the comparative data.

The rule requires that an account manager disclose to customers whether accounts in which the account manager has any interest may be included with customer accounts in bunched orders eligible for post-execution allocation. In addition, the recordkeeping requirements would deter and facilitate detection of misallocations, which may indirectly benefit the account manager.[64] The regulation also requires that an exchange that permits the placement, execution, and allocation of orders eligible for post-execution allocation must adopt, as part of its rule enforcement program, audit procedures to determine compliance with relevant recordkeeping provisions. The exchange, or the DSRO of a member firm clearing orders eligible for post-execution allocation, must adopt audit procedures to determine compliance with relevant certification, allocation, and recordkeeping requirements.

Under the regulation, the account manager must, prior to order placement, create and timestamp an order origination document reflecting the terms of the order and the expected allocation of fills received. Any subsequent change to the terms or allocation must likewise be documented and timestamped. These documents must be retained under the Commission's record retention regulation. The order must be identified as an order eligible for post-execution allocation by group identifier or other code at the time of placement on the floor order ticket and, if appropriate, on the office order ticket. The group identifier or other code on the order tickets must relate back to the order origination document. All trades resulting from the execution of an order must be identified on exchange trade

[58] The exchange, as part of its rule enforcement program, would be expected to examine the order tickets for the presence of identifiers that would (1) indicate that the order was eligible for post-execution allocation and (2) relate back to the order origination document. The exchange would not be required to determine the validity of the identifier that related back to the order origination document.

[59] The Commission appreciates the views of the law enforcement authorities that commented on the previous proposals and shared their desire that Commission-regulated futures and option markets not be used as a vehicle to commit serious financial crimes. It is with those concerns in mind that the Commission has crafted the protections incorporated into the final regulation. These protections include specific eligibility requirements for account managers and customers, as well as disclosure, allocation and recordkeeping provisions intended to document fair and non-preferential treatment of customers. Coupled with the strong antifraud provisions of the Act and the Commission's rigorous supervision rule, these protections should insure that the proposed allocation procedure would not unduly threaten customer protection or market integrity. Rather, the rule should enable account managers acting in a fiduciary capacity to handle customer interest without undermining any legitimate customer or law enforcement interests.

[60] As previously noted, end-of-day or post-execution allocation of bunched or block orders is permissible on foreign futures exchanges and in the cash and securities markets. The NYSE has permitted end-of-day allocation of securities block orders since October 1983. Interpretation 88–3 of NYSE Rule 410(a)(3).

[61] NFA commented that the Commission should adopt the rule for a one-year pilot program and then reevaluate its usage with an eye toward expanding its application to other types of customers and making other adjustments deemed appropriate based upon experience. The Commission is satisfied that, based upon its experience with this issue, a pilot program is not necessary. Of course, the Commission retains the right to amend this regulation if actual experience with the rule indicates that modification would be appropriate.

[62] Where applicable, the employing firm of an account manager should have appropriate internal controls in place to address the added discretion that the account manager will be able to exercise pursuant to this regulation.

[63] Pursuant to Regulation 166.3, an account manager's employer, if registered with the Commission, has a duty diligently to supervise his or her activities. Regardless of registration status, a principal could be held liable for an account manager's wrongdoing under Section 2(a)(1)(A) of the Act.

[64] As a matter of state law or federal securities, commodities, and banking law, eligible account managers would have fiduciary responsibility for their investment management activities. Account managers would be subject to Section 4b, the general antifraud provision of the Act. Account managers who are also acting as CTAs or commodity pool operators (''CPO''), irrespective of registration status, would also be subject to Section 4o. Account managers who place orders for option contracts would also be subject to Commission Regulations 32.9 and 33.10, that prohibit fraud in connection with commodity option transactions.

registers and computerized trade practice surveillance records.

Those requirements, in conjunction with existing audit trail requirements, should enable the Commission, other regulatory agencies, and self-regulatory organizations to track any eligible order from time of placement to allocation of fills. At the time of placement, the order would be identified on the order origination document and on order tickets. These order tickets would be timestamped upon receipt of the order. The order executions would be identified on trading cards and/or order tickets and on exchange trade registers by, among other things, both time and price. The order tickets would be timestamped again to identify time of report of execution. The subsequent allocation of the fills would be maintained on FCM and exchange records. Thus, an auditor could determine, among other things, the size and time of initial order placement, the times and prices of executions, the identities of accounts to which the fills were allocated, and the prices and quantities of the fills allocated thereto.

Based on the foregoing, the Commission believes that this rule strikes an appropriate balance between regulatory protection and regulatory relief.

IV. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 et seq., requires that agencies consider the impact of rules on small businesses. The Commission has previously determined that contract markets,[65] FCMs,[66] registered CPOs,[67] and large traders [68] are not ''small entities'' for purposes of the RFA. The Commission has previously determined to evaluate within the context of a particular rule proposal whether all or some CTAs should be considered ''small entities'' for purposes of the RFA and, if so, to analyze the economic impact on CTAs of any such rule at that time.[69] CTAs who would place orders eligible for post-execution allocation pursuant to these procedures would do so for multiple clients and would be participating as investment managers for a sophisticated group of eligible customers. Accordingly, the Commission does not believe that CTAs should be considered ''small entities'' for purposes of this regulation. Similarly, the Commission does not believe that foreign advisers placing orders pursuant to these procedures on behalf of sophisticated foreign investors should be considered ''small entities'' for purposes of this regulation.

Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

Regulation 1.35(a–would provide relief from individual account identification requirements, thereby providing those small entities who qualify and elect to use the relief with a less burdensome method for satisfying Commission Regulation 1.35 requirements.[70]

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, this final rule informs the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit, or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission has previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on March 14, 1998, and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response—3609.26
Number of Respondents—15,691.00
Frequency of Response—On Occasion

The burden associated with this specific proposed rule is as follows:

Average burden hours per response—0.5
Number of Respondents—400.00
Frequency of Response—On Occasion

Persons wishing to comment on the information required by this final rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, and (202) 418–5160.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Commodity options, Commodity trading advisors, Commodity pools, Consumer protection, Contract markets, Customers, Designated self-regulatory organizations, Futures commission merchants, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements, Rule enforcement programs.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 5, 5a, 5b, 6(a), 6b, 8a(7), 8a(9) and 8c, 7 U.S.C. 7, 7a, 7b, 8(a), 8b, 12a(7), 12a(9), and 12c, the Commission hereby amends Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.35 is amended by revising paragraphs (a–1)(1), (a–1)(2)(i), and (a–1)(4) and by adding paragraph (a–1)(5) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

* * * * *

(a–1) * * *

(1) Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, and shall record thereon, by timestamp or

[65] 47 FR 18618, 18619 (April 30, 1982).

[66] *Id.*

[67] *Id.* at 18620.

[68] *Id.*

[69] *Id.*

[70] The Commission received no comments addressing its conclusions with regard to the RFA.

other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of the order in nonerasable ink, including the account identification, except as provided in paragraph (a–1)(5) of this section or appendix C to this part, and order number and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received.

* * * * *

(4) Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of the contract market received in accordance with paragraphs (a–1)(2)(i) or (a–1)(2)(ii)(A) of this section, shall record on a written record of the order, including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, by timestamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on the order tickets must be written in nonerasable ink.

(5) Orders eligible for post-execution allocation. Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of this paragraph are met. The bunched order must be placed by an eligible account manager on behalf of eligible customer accounts and must be handled in accordance with contract market rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41.

(i) Eligible account managers. The person placing and directing the allocation of an order eligible for post-execution allocation must be one of the following who has been granted investment discretion with regard to eligible customer accounts:

(A) A commodity trading advisor registered with the Commission pursuant to the Act;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser who provides advice solely to foreign persons and who is subject to regulation by a foreign regulator or self-regulatory organization that has been granted an exemption pursuant to § 30.10 of this chapter or has entered into a Memorandum of Understanding or other arrangement for cooperative enforcement and information sharing with the Commission (for the purposes of this section, referred to as a ''foreign authority''), provided that the certification required by paragraph (a–1)(5)(iv)(C) of this section is made.

(ii) *Eligible customers.* The accounts for which orders eligible for post-execution allocation may be placed and to which fills may be allocated must be owned by the following entities:

(A) A bank or trust company;

(B) A savings and loan association or credit union;

(C) An insurance company;

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*) or a foreign investment company performing a similar role or function subject to foreign regulation, *provided* that the investment company has total assets exceeding $5,000,000;

(E) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign entity performing a similar role or function subject to foreign regulation, *provided* that the commodity pool or foreign entity has total assets exceeding $5,000,000;

(F) A corporation, partnership, proprietorship, organization, trust, or other entity, *provided* that the entity has either a net worth exceeding $1,000,000 or total assets exceeding $10,000,000;

(G) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign entity performing a similar role or function subject to foreign regulation, with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*) or a commodity trading advisor subject to regulation under the Act;

(H) Any government entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) or a foreign person performing a similar role or function subject to foreign regulation, acting on its own behalf:

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject to foreign regulation, acting on its own behalf;

(K) An eligible account manager, as defined in paragraph (a–1)(5)(i) of this section; or

(L) Any natural person with total assets exceeding $10,000,000.

(iii) *Disclosure.* Before placing the initial order eligible for post-execution allocation, the account manager must disclose the following to each of its customers to be subject to post-execution allocation:

(A) The general nature of the allocation methodology the account manager will use;

(B) The standard by which the account manager will judge the fairness of allocations;

(C) The ability of the customer to review summary or composite data sufficient for that customer to compare its results with those of other relevant customers; and

(D) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation.

(iv) *Account certification.* Before placing an order eligible for post-execution allocation, the account manager must provide the following to each futures commission merchant clearing any part of the order:

(A) If not previously provided, certification, in writing, that the account manager is aware of, and will remain in compliance with, the requirements of this paragraph. This certification shall remain in effect until revoked by the account manager; and

(B) If not previously identified, the identity of each eligible customer account to which fills will be allocated.

(C) Foreign advisers must also provide a written certification from a foreign authority stating that the foreign adviser's activities are subject to regulation by that foreign authority and the foreign authority will provide, upon request of the Commission or Department of Justice, information that relates to the foreign adviser's compliance with the requirements of this paragraph.

(v) *Allocation.* Orders eligible for post-execution allocation must be allocated in accordance with the following:

(A) Allocations must be made only to the accounts of eligible customers.

(B) Allocations must be made as soon as practicable after the entire transaction is executed, but no later than the end of the day the order is executed.

(C) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(D) The allocation methodology must be sufficiently objective and specific so that the appropriate allocation for a given trade can be verified in an independent audit.

(E) The allocation methodology must be consistently applied.

(vi) *Recordkeeping.* The following recordkeeping requirements apply to orders eligible for post-execution allocation:

(A) Prior to order placement, each account manager must create and timestamp an order origination document reflecting the terms of the order and expected allocation thereof. Any subsequent determination to alter any terms or allocation of the order should likewise be documented.

(B) Each order must be identified by group identifier or other code on the office and/or floor order tickets at the time of placement. The group identifier or other code on each order ticket must relate back to the specific order origination document required by paragraph (a–1)(5)(vi)(A) of this section.

(C) Each transaction must be identified as part of an order eligible for post-execution allocation on contract market trade registers and other computerized trade practice surveillance records.

(D) Each account manager must make available, upon request of any representative of the Commission or the United States Department of Justice, the following records:

(*1*) The disclosure documents required pursuant to paragraph (a–1)(5)(iii) of this section; and

(*2*) Records reflecting futures and option transactions and other transactions and any other records, including the order origination document, that would identify the management strategy or the allocation methodology or would relate to, or reflect upon, the fairness of the allocations.

(E) Each account manager must make available for review, upon request of an eligible customer, summary or composite data sufficient for that customer to compare its results with those of other relevant customers. These summary data may be prepared so as not to disclose the identity of individual account holders.

(vii) *Self regulatory organization rule enforcement and audit procedures.* As part of its rule enforcement program, each contract market that adopts rules that allow the placement of orders eligible for post-execution allocation must adopt audit procedures to determine compliance with the recordkeeping requirements identified in paragraph (a–1)(5)(vi) (B) and (C) of this section. Each contract market, or the designated self-regulatory organization of a member firm, must adopt audit procedures to determine compliance with the certification and allocation requirements identified in paragraphs (a–1)(5)(iv) and (a–1)(5)(v) (A) and (B) of this section.

* * * * *

Issued in Washington, DC on August 21, 1998 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–22933 Filed 8–26–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: Rule 1.12 of the Commodity Futures Trading Commission (Commission or CFTC) [1] sets forth the early warning reporting requirements for futures commission merchants (FCMs) and introducing brokers (IBs). These requirements are designed to afford the CFTC and industry self-regulatory organizations (SROs) sufficient advance notice of a firm's financial or operational problems to take any protective or remedial action that may be needed to assure the safety of customer funds and the integrity of the marketplace.

The Commission is adopting as proposed an amendment to Rule 1.12, applicable to FCMs only, to require immediate notification by an FCM to the CFTC and its designated self-regulatory organization (DSRO) if an FCM knows or should know that it is in an undersegregated or undersecured condition, i.e., that the FCM has insufficient funds in accounts segregated for the benefit of customers trading on U.S. contract markets or has insufficient funds set aside for customers trading on non-U.S. markets to meet the FCM's obligations to its customers. The term ''funds'' in this context includes accrued amounts due to or from the FCM's clearing organizations and/or carrying brokers in connection with customer-related activities, typically the daily or intraday variation settlement.

The Commission is also adopting amendments to Rule 1.12, as proposed, to require immediate notification of certain events pertaining to undercapitalization or failure to satisfy margin calls, where notice has been required within 24 hours. In addition, the Commission has determined to codify a previous staff interpretation that permits notices required by Rule 1.12 to be filed by facsimile in lieu of telegraphic means and to require immediate telephonic notice as well.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Deputy Director and Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 6, 1998, the Commission proposed amendments to the early warning requirements set forth in Rule 1.12.[2] These proposals included: (1) a new requirement for an FCM to notify the CFTC and its DSRO immediately (by telephone call to be followed immediately by telegraphic or facsimile notice) when it knows or should know that it is in an undersegregated or undersecured condition; (2) requiring immediate telephonic notice, rather

[1] Commission rules are found at 17 CFR Ch. I (1998).

[2] 63 FR 2188 (Jan. 14, 1998).

than notice within 24 hours, when an FCM or IB is undercapitalized or when an account must be liquidated, transferred or allowed to trade for liquidation only; and (3) codifying a previous staff interpretation that permits written notices to be filed by facsimile in lieu of telegraphic means.[3]

The 60-day comment period expired on March 16, 1998. The Commission received eight comment letters. Three FCMs, GNI Incorporated (GNI), FIMAT USA Inc. (FIMAT) and Lind-Waldock & Company (LWC), each submitted a comment letter. One comment letter was submitted on behalf of six exchanges (Chicago Board of Trade, Chicago Mercantile Exchange (CME), Kansas City Board of Trade, Minneapolis Grain Exchange, New York Cotton Exchange and New York Mercantile Exchange, collectively referred to as the Exchanges). Another exchange, the Coffee, Sugar & Cocoa Exchange (CSCE), submitted its own comment letter. The other commenters were the Association of the Bar of the City of New York's Committee on Futures Regulation (NYC Bar), National Futures Association (NFA) and the Futures Industry Association (FIA).[4] The commenters expressed concern about the ''should know'' portion of the reporting standard in the proposed undersegregation notice rule. Some of the commenters suggested alternatives to the proposals. These comments and alternatives are discussed more fully below.

The Commission has considered carefully the comments received. Based upon these comments, discussions between Commission staff and industry representatives and the Commission's reconsideration of this subject, the Commission has determined to adopt a new Rule 1.12(h) as proposed so that an FCM will be required to notify immediately the CFTC and its DSRO of an undersegregated or undersecured condition if it knows or should know the condition exists. The Commission has also provided in the preamble of this release, in response to suggestions from FIA and NFA, an example of the circumstances that would trigger a requirement to report under the new standard. The other rule amendments have been adopted essentially as proposed.

II. Rule Amendments

A. Undersegregation Notice

1. Proposal

FCMs occasionally have become undersegregated as a result of market movements which cause deficits in the accounts they carry on behalf of their customers. Generally, the undersegregated condition is discovered as a result of the segregation calculation, which under Commission rules is required to be completed by noon on the business day following the day of the market movements. Most FCMs are able to avoid any undersegregated condition which might have occurred on the same business day for which the segregation calculation is made, using proprietary funds or through collection of deficits by wire transfer arrangements made with customers. However, this is not always the case. During the market downturn on October 27, 1997, the Commission was made aware that a few FCMs experienced undersegregation to a degree that they were unable to make up the shortfall from their own internal proprietary funds. Infusions of external capital were required in those cases to correct the undersegregated conditions. The Commission is also aware that, in at least one case, an FCM was aware that it was undersegregated as of the close of business on October 27, due to losses in the accounts of a single customer. Further, this FCM was aware on October 27 that it was likely this customer would default in its obligations to the FCM and that, as a result, the FCM would be undersegregated. Further, the FCM also knew that it did not have sufficient proprietary funds within the firm to correct the undersegregated condition. As explained further below, the Commission was notified on or about the close of business October 28—at least one day after the FCM was well aware of the situation.

An evaluation of the Commission's early warning notification rules indicated that these rules, which require notice to the Commission upon, among other events, an FCM falling below the adjusted net capital early warning level, which is 150 percent of the minimum required, may not result in notice to the commission until as much as a day or a day and a half after the occurrence of a major market event that causes an undersegregated condition. In particular, on October 27, 1997, some firms knew that they had a major problem by noon of that day, but did not provide notice of these problems to the Commission until on or about the close of business on October 28.

The Commission, therefore, proposed a new Rule 1.12(h)[5] that would require an FCM to notify the Commission and its DSRO immediately after it knows or should know that funds segregated for customers trading on U.S. markets or set aside for customers trading on non-U.S. markets are less than the amount required to be segregated or set aside by the Commodity Exchange Act (Act) or Commission rules.[6] In this context, the term ''funds'' includes funds on deposit and funds due to or from the FCM's clearing organizations or carrying brokers. The Commission's proposal would require an immediate telephone call by an FCM, to be followed immediately by telegraphic or facsimile notice. The notification to the Commission would be directed to the Division of Trading and Markets, to the attention of the Director and the Chief Accountant, and notice to the DSRO was to be directed to the person or unit provided for under the DSRO's rules. For example, the notice required by CME Rule 971 must be sent to CME's Audit Department.[7]

2. Comments on Proposed Reporting Standard

Most of the commenters objected to the ''should know'' standard in proposed new Rule 1.12(h). GNI, Cargill and LWC criticized this language as being too vague and granting the Commission too much discretion. NYC Bar and CSCE claimed that a ''should know'' standard would lead to overreporting by firms fearful of an enforcement action. Overreporting could create or exacerbate, rather than prevent or ameliorate, a market crisis, causing rumors to spread of problems at reporting firms, according to the NYC Bar and GNI. FIA expressed concern that this could cause the Commission to take precipitous action, such as ordering the transfer of accounts.

NYC Bar also stated that ''the 'should know' standard has not been the subject of litigation or addressed by any staff interpretations.'' The Commission notes that the ''should know'' standard has

[3] The CFTC's Division of Trading and Markets has stated that any notice required to be transmitted to the CFTC under Rule 1.12 by telegraphic notice may be transmitted by facsimile machine. *See* CFTC's Advisory No. 90–2, [1987–1990] Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,599 (Feb. 6, 1990). The CFTC proposes to codify this Advisory throughout Rule 1.12 to make clear that any written notice can be provided either through telegraphic means or via facsimile transmission.

[4] In addition, the comment file contains a memorandum from Commissioner Holum's office concerning a meeting on February 10, 1998, with staff of Cargill Investor Services, Inc. and Cargill Grain Division (collectively, Cargill) during which the rule proposals, among other things, were discussed.

[5] The Commission proposed to redesignate current paragraph (h) of Rule 1.12 as paragraph (i) and to include the new rule in a new paragraph (h).

[6] Background on the segregation and set aside requirements is set forth at 63 FR 2188, 2189.

[7] The CME has a rule requiring that a FCM for which it acts as the DSRO provide written notice to CME within 24 hours after the FCM becomes aware of its failure to maintain sufficient funds in segregation or set aside in separate accounts. Rules of the Chicago Mercantile Exchange, Rule 971 *Segregation and Secured Requirements* (1997).

been part of the standard for reporting undercapitalization in Rule 1.12(a) since it was adopted 20 years ago.[8] The Commission was intending to conform the reporting requirements for undersegregation and undercapitalization, a concept that FIMAT deemed sensible in its comment letter (although, as discussed below, FIMAT objected to the timing element). The Commission further notes that Rule 1.12(a) has been the subject of litigation.[9]

Some commenters suggested alternatives. FIA stated that it could support reporting of undersegregation subject to three conditions, which should be set forth in the rule itself or in the preamble of the **Federal Register** notice announcing adoption of the rule: (1) there is a significant undermargined account; (2) the customer makes clear that it is unable or unwilling to meet the margin call; and (3) the FCM is aware that it will be unable to transfer enough funds from its own accounts into segregation in a timely manner to cover the shortfall. NFA stated that, in extraordinary markets, an FCM may know earlier than the formal computation deadline of noon the following business day that it is undersegregated and suggested that the Commission clarify that this is the exception rather than the norm.

In an effort to respond to the commenters, the Commission's staff explored the use of language other than ''knows or should know'' for the undersegregation notice requirement on an informal basis with representatives of entities that submitted comment letters. Following these discussions and Commission reconsideration of the issue, the Commission has determined to adopt as the standard for reporting an undersegregated or undersecured condition that an FCM ''knows or should know'' either condition exists, as the Commission proposed. Of course, this standard would be met if the daily calculations of segregation and secured amount requirements pursuant to Rules 1.32 and 30.7(f) reveal deficiencies. However, the requirement to report under new Rule 1.12(h) could also arise even before the required daily calculations of segregation and secured amount must be made. The Commission notes, in response to FIA's and NFA's suggestion referred to above, the one example of when the Commission would conclude that an FCM knows or should know that the new reporting requirement is triggered is the following circumstance: (1) there is a significant undermargined account; (2) the customer makes clear that it is unable or unwilling to meet the margin call; and (3) the FCM is aware that it will be unable to transfer enough funds from its own accounts into segregation or separate set-aside accounts to cover the shortfall.

That part of the standard requiring an FCM to report when it ''should know'' of a problem may be defined as the point at which a party, in the exercise of reasonable diligence, should become aware of an event. This is an objective standard that has been applied by courts on numerous occasions.[10] As noted above, the standard ''knows or should know'' has been used in Commission Rule 1.12(a) for almost 20 years, and this language is used in other federal regulations.[11] Because of the severe financial consequences that could arise from an FCM's failure to comply with segregation and secured amount requirements, and to achieve consistency between the treatment of undercapitalization and undersegregation conditions, the Commission believes that it is appropriate to adopt the ''knows or should know'' standard for new Rule 1.12(h).

By this rule change, the Commission requires reporting of serious problems, such as occurred on October 27, 1997, as soon as they become apparent to the FCM. In addition, the Commission wishes to make clear that an FCM cannot avoid the reporting requirement by failing to perform or by delaying the required segregation and secured amount calculations pursuant to Rules 1.32 and 30.7(f). Failure to make the required calculations, which are rule violations in and of themselves, cannot be used as an excuse for failing to report as required by new Rule 1.12(h).

3. Comments on When to Report

The Commission proposed that an FCM be required to report an undersegregated or undersecured condition immediately by telephone, which is to be confirmed in writing immediately by telegraphic or facsimile notice. The Exchanges and FIMAT stated that, during major market moves, the first priority of an FCM should be to monitor accounts, to collect required deposits and to ensure that settlement variation requirements can be met. In their view, it is less important to perform immediately a ministerial calculation to determine whether a precise violation of segregation requirements has occurred than to address immediately all severe problems. These commenters, as well as GNI, NYC Bar and FIA, also noted that, given the nature of today's financial markets, with round-the-clock, round-the-globe trading and increased give-up business, it takes time for an FCM to gather and to review the necessary information concerning an FCM's segregation and secured amount requirements; moment-to-moment calculations are not possible. Two commenters (GNI and FIMAT) questioned whether Commission staff would be available at all times to receive calls if immediate telephonic notice is required.

Certain commenters also suggested alternatives on this aspect of the proposals. FIMAT noted that, pursuant to CME Rule 971(C), it is already required to report undersegregation to the CME within 24 hours. FIMAT stated that it would not object to a similar time frame in a Commission rule; earlier reporting could be encouraged, but mandating immediate reporting is too severe in FIMAT's view. NYC Bar suggested that the Commission amend Rule 1.32 to require earlier completion of the daily segregation record (now required by noon on the following business day) and immediate reporting of undersegregation as of the earlier time.

The Commission considered the time for reporting in connection with the rule proposal and determined that immediate reporting would be the appropriate standard. The Commission recognizes, however, that time may be needed for consultation by FCM staff with senior management, and it did not intend to foreclose that activity. The Commission also did not intend to require FCMs to make additional segregation calculations on a routine basis, but only to do so if a problem arises that could trigger the reporting requirement under new Rule 1.12(h). It is the Commission's intent that the ''knows or should know'' standard be implemented by FCMs using existing sources of information and computations. Nor does the Commission wish to accelerate the requirement for completion of the daily segregation record, as suggested by the NYC Bar, since the Commission would have to propose such a rule change and allow

[8] 43 FR 39956, 39969 (Sept. 8, 1978).

[9] *See, e.g., In the Matter of First Commercial Financial Group, Inc., et al.*, CFTC Docket No. 95–10, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,180 (Initial Decision Oct. 27, 1997); *In the Matter of Eagan & Company, Inc., et al.* CFTC Docket No. 92–20, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,350 (Initial Decision July 31, 1992).

[10] *See, e.g., Anixter* v. *Home-State Production Company*, 947 F. 2d 897, 899 & n.5 (10th Cir. 1991); *Maloley* v. *R.J. O'Brien & Associates, Inc.*, 819 F.2d 1435, 1442–1444 (8th Cir. 1987).

[11] *See, e.g.*, 17 CFR 240.14e–3 (1998); 29 CFR 1604.11 (1997).

further comment thereon and the Commission does not believe at this time that such a rule change is needed. The Commission is requiring that, when an FCM knows or should know that it is undersegregated or undersecured, it must report that immediately. As to the availability of Commission staff for immediate telephonic notification under new Rule 1.12(h), the Commission does not believe that this will be a problem given modern telecommunications facilities.

After reviewing other provisions of the early warning requirements, the Commission proposed that notices of events that had been required within 24 hours (namely, when an FCM or IB is undercapitalized or when an account must be liquidated, transferred or allowed to trade for liquidation only) be made immediately. Such notifications would be required by telephone immediately, to be confirmed in writing by telegraph or facsimile. *See* Rule 1.12(a)(1), (f)(1), and (f)(2). Certain other provisions of Rule 1.12 already require immediate notifications. *See* paragraphs (e), (f)(3), (f)(4) and (f)(5) of Rule 1.12. The Commission also proposed that these notifications be made by telephone as well as by telegraph or facsimile. The Commission received no comment on these proposals and is adopting them as proposed.[12]

4. Comments on Where to Report

The Commission proposed new Rule 1.12(h) to require an FCM to report an undersegregated or undersecured condition both to its DSRO and to the Commission, which is consistent with the other provisions of Rule 1.12. The Exchanges, FIA, GNI and LWC commented that all early warning notices, including those unaffected by the recent proposals, should be filed only with a firm's DSRO, which would in turn be responsible for informing the CFTC and other SROs. This would eliminate the requirement for a firm to report directly to the Commission. Taking a different viewpoint, CSCE complained that DSROs fail to share early warning notice information in a timely manner with other exchanges and clearing organizations where the FCM that filed an early warning notice is carrying large positions.

The Commission did not consider this to be an issue in drafting the proposals, and the proposal as to where to report an undersegregated or undersecured condition was consistent with the other provisions of Rule 1.12. Since time is of the essence in situations addressed by Rule 1.12, and in light of the Commission's review of all of the comments on this point, the Commission has determined to adopt as proposed the requirement for direct notice by firms to the Commission under new Rule 1.12(h). The Commission also wishes to note, however, that it encourages FCMs to communicate with their DSROs on an ongoing basis and believes that DSROs can perform an important role in determining when it is appropriate for early warning notices to be filed. In any event, at the point when an FCM knows or should know that it is in an undersegregated or undersecured condition, it must report that condition immediately to its DSRO and the Commission.

The Exchanges requested that paragraphs (f)(3)–(f)(5) of Rule 1.12 be deleted as ineffectual. These provisions require immediate reporting whenever (1) an FCM issues a margin call in excess of its adjusted net capital,[13] (2) a margin call is not met by the close of business on the day following its issuance, or (3) an FCM's excess adjusted net capital is less than six percent of maintenance margin required on positions carried for noncustomers other than another FCM or a securities broker-dealer.

The Commission's only proposals with respect to paragraphs (f)(3)–(f)(5) of Rule 1.12, which were adopted in conjunction with and were derived from the proposals for the Commission's risk assessment rules, Rules 1.14 and 1.15, concerned telephonic and facsimile notice as described above. The Commission believes that these provisions should be retained, but that, if the Commission pursues further rulemaking concerning risk assessment, it may be appropriate at that time to reconsider Rule 1.12(f)(3)–(f)(5).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect primarily FCMs. The amendment of one provision, § 1.12(f)(1), would affect clearing organizations, and the amendment of another provision, § 1.12(a)(1), would affect IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[14] Contract markets and their clearing organizations have also been excluded from the definition of small entity.[15]

The amendment to § 1.12(a)(1) concerning notice of undercapitalization affects the minority of IBs that rely upon their own capital to meet adjusted net capital rules, ''independent'' IBs, as well as FCMs. The Commission has determined to require that this notice be provided immediately rather than within 24 hours as previously required. The notification requirement will remain essentially the same, but the time within which to report has been shortened. The Commission believes that this rule amendment is necessary for the Commission and DSROs to be able to carry out their oversight and monitoring functions concerning the financial condition of futures industry intermediaries and to protect the customers of those firms and the markets. Therefore, any slight increase in the burden on an independent IB caused by the amendment to Rule 1.12(a)(1) is necessary for the Commission to fulfill its regulatory obligations.[16]

Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission anticipates that fewer than ten FCMs per year will file reports under the new rule, and thus the new rule will not constitute a collection of information under the PRA.[17] The group of rules (3038–0024) of which this is a part has the following burden:
Average Burden Hours Per Response:
128

[12] The Commission is also adopting as proposed a correction to the cross-reference in § 1.12(g)(2) concerning consolidation that now refers to ''§ 1.10(f)'' to read ''1.17(f)''.

[13] FIMAT commented that the existence of Rule 1.12(f)(3), which requires immediate reporting when an FCM issues a margin call in excess of its adjusted net capital, is a reason not to require immediate reporting of undersegregation.

[14] 47 FR 18618–18621 (April 30, 1992).

[15] *Id.*

[16] The Commission evaluates within the context of a particular rule proposal whether all or some IBs should be considered small entities and, if so, analyzes the impact on IBs of the proposal. 48 FR 35248, 35276 (Aug. 3, 1983).

[17] 44 U.S.C. 3502(3) (Supp. I 1995).

Number of Respondents: 1366
Frequency of Response: On ocassion

Copies of the OMB approved information collection package associated with this rule may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Minimum financial and related reporting requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby amends Part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.12 is amended by revising paragraph (a)(1), by revising the first sentence of paragraph (b)(4), by adding the phrase ''or facsimile'' after the word ''telegraphic'' in paragraphs (c) and (d), by revising paragraph (e), by adding the phrase ''telephonic, confirmed in writing by'' before the word ''telegraphic,'' by adding the phrase ''or facsimile,'' after the word ''telegraphic'' and by revising the phrase at the end which reads ''within 24 hours'' to read ''immediately'' in paragraphs (f)(1) and (f)(2), by adding the phrase ''telephonic, confirmed in writing by'' before the word ''telegraphic'' and by adding the phrase ''or facsimile,'' after the word ''telegraphic'' in paragraph (f)(3), by adding the phrase ''by telephone, confirmed in writing immediately by telegraphic or facsimile notice,'' after the word ''immediately'' in paragraphs (f)(4) and (f)(5), by revising the phrase in paragraph (g)(2) which reads ''§ 1.10(f)'' to read ''§ 1.17(f)'', by redesignating paragraphs (h)(1) and (h)(2) as paragraphs (i)(1) and (i)(2), respectively, by revising the last sentence of paragraph (i)(2), and by adding a new paragraph (h). The additions and revisions follow:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) * * *

(1) Give telephonic notice, to be confirmed in writing by telegraphic or facsimile notice, as set forth in paragraph (i) of this section that the applicant's or registrant's adjusted net capital is less than required by § 1.17 or by other capital rule, identifying the applicable capital rule. The notice must be given immediately after the applicant or registrant knows or should know that its adjusted net capital is less than required by any of the aforesaid rules to which the applicant or registrant is subject; and

* * * * *

(b) * * *

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(b) of the Securities and Exchange Commission (17 CFR 240.17a–11(b)), must file written notice to that effect as set forth in paragraph (i) of this section within five (5) business days of such event. * * *

* * * * *

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or written report as required by § 1.12, that self-regulatory organization must immediately report this failure by telephone, confirmed in writing immediately by telegraphic or facsimile notice, as provided in paragraph (i) of this section.

* * * * *

(h) Whenever a person registered as a futures commission merchant knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers, or that the total amount set aside on behalf of customers trading on non-United States markets, is less than the total amount of such funds required by the Act and the Commission's rules to be on deposit in segregated or secured amount accounts on behalf of such customers, the registrant must report immediately by telephone, confirmed in writing immediately by telegraphic or facsimile notice, such deficiency to the registrant's designated self-regulatory organization and the principal office of the Commission in Washington, D.C., to the attention of the Director and the Chief Accountant of the Division of Trading and Markets.

(i) * * *

(2) * * * Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

Issued in Washington, D.C. on August 24, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–23021 Filed 8–26–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0057]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] as a stabilizer for polyethylene phthalate polymers intended for use in contact with food. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

DATES: The regulation is effective August 27, 1998; written objections and requests for a hearing by September 28, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 6, 1998 (63 FR 6193), FDA announced that a food additive petition (FAP 8B4578) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] as a stabilizer for polyethylene phthalate polymers complying with 21 CFR 177.1630, intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material.

Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4578 (63 FR 6193). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 28, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) for the entry ''calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate]'' by adding entry ''15'' under the heading ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
Calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] (CAS Reg. No. 65140–91–2).	For use only: * * * 15. At levels not to exceed 0.3 percent by weight of polyethylene phthalate polymers, complying with § 177.1630 of this chapter. Provided, that the finished polymers contact food only under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: August 17, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–23029 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 98N–0170]

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of May 12, 1998, a proposed rule (63 FR 26129) and a direct final rule (63 FR 26069) to implement amendments to the medical device reporting provisions of the Federal Food, Drug, and Cosmetic Act, as amended by the FDA Modernization Act of 1997 (FDAMA). The comment period closed July 27, 1998. FDA is withdrawing the direct final rule because the agency received significant adverse comment.

EFFECTIVE DATE: The direct final rule published at 63 FR 26069, May 12, 1998, is withdrawn on August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Spitzig, Center for Devices and Radiological Health (HFZ–500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2812.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on May 12, 1998, at 63 FR 26069 is withdrawn.

Dated: August 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22926 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH88

Election of Education Benefits

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) educational assistance and educational benefits regulations relating to certain elections between benefits. VA has provided by regulation that after a veteran seeks to make an election to have service in the Selected Reserve credited toward payment under the Montgomery GI Bill—Selected Reserve (MGIB–SR) program or under the Montgomery GI Bill—Active Duty (MGIB–AD) program, the election will take effect when the individual has negotiated a check issued under the program she or he has elected. In order to adapt the regulations to the new system of electronic transfers, these election provisions are changed to make the election effective either upon negotiation of a check or electronic receipt of education benefits. VA has provided by regulation that an election to receive benefits under Survivors' and Dependents' Educational Assistance (DEA) for a program of education rather than pension, compensation, or Dependency and Indemnity Compensation (DIC) will take effect when the individual has commenced a program of education and negotiated a check issued under the program she or he has elected. In order to adapt the regulations to the new system of electronic transfers and to ensure that decisions are made with knowledge, these election provisions are changed to require a written election to be submitted and to make the election effective either upon negotiation of a check or electronic receipt of education benefits. Nonsubstantive changes are also made for purposes of clarity and to reflect current statutory codification and authority. This final rule also involves collections of information.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 25, 1997 (62 FR 62736), it was proposed to amend the ''SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CHAPTER 35'' regulations, the ''ALL VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM (MONTGOMERY GI BILL—ACTIVE DUTY)'' regulations, and the ''EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE'' regulations as set forth in the SUMMARY portion of this document. These regulations are set forth at 38 CFR Part 21, Subparts C, K, and L.

Interested persons were given 60 days to submit comments. No comments were received. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the MGIB–SR program. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

Paperwork Reduction Act of 1995

Information collection and recordkeeping requirements associated with this final rule concerning § 21.3023 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0595. The final rule at § 21.3023 requires that an election to receive DEA rather than DIC must be made to VA in writing.

Furthermore, information collection and recordkeeping requirements associated with this final rule concerning §§ 21.7042 and 21.7540 have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0594. The final rule at §§ 21.7042 and 21.7540 requires that a veteran must choose to apply certain Selected Reserve service either to MGIB—SR or MGIB.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to each collection of information in this final rule is displayed at the end of each affected section of the regulations.

Regulatory Flexibility Act

The signers of this document hereby certify that this final rule does not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), the final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by the final rule are 64.117 and 64.124. The final rule also affects the Montgomery GI Bill—Selected Reserve for which there is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed Forces, Civil rights, Claims, Colleges and universities, Conflicts of interests, Defense Department, Education, Educational institutions, Employment, Grant-programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 19, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: July 15, 1998.

Normand G. Lezy,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: July 28, 1998.

T. J. Barrett,

RADM, USCG, Acting Assistant Commandant for Human Resources.

For the reasons set out in the preamble, 38 CFR part 21 (subparts C, K, and L) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors and Dependents Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

2. In § 21.3023, paragraph (c)(3) is amended by removing ''educational assistance'' and adding, in its place, ''education under DEA''; the section heading, paragraph (c) introductory text, and paragraph (c)(1) are revised; a parenthetical is added at the end of the section, and an authority citation for the section is added, to read as follows:

§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

* * * * *

(c) *Child; election.* An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

* * * * *

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0595)

(Authority: 38 U.S.C. 3562)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

3. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

4. In § 21.7042, the section heading and paragraphs (d)(2) and (d)(3) are revised, paragraph (d)(4) and its authority citation are added, and a parenthetical is added at the end of the section, to read as follows:

§ 21.7042 Eligibility for basic educational assistance.

* * * * *

(d) * * *

(2) An individual must elect, in writing, whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual:

(A) Is a veteran who has established eligibility for basic educational assistance through meeting the provisions of paragraph (b) of this section; and

(B) Also is a reservist who has established eligibility for benefits under 10 U.S.C. chapter 1606 through meeting the requirements of § 21.7540; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505.

(3) An election under this paragraph (d) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the veteran either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(4) If a veteran is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (d)(1) through (d)(3) of this section.

(Authority: 10 U.S.C. 16132, 38 U.S.C. 3033(c))

* * * * *

(The information requirements in this section have been approved by the Office of Management and Budget under control number 2900–0594)

Subpart L—Educational Assistance for Members of the Selected Reserve

5. The authority citation for part 21, subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501, unless otherwise noted.

6. In § 21.7540, paragraph (c) and the authority citation for paragraph (d) are revised, and a parenthetical is added at the end of the section, to read as follows:

§ 21.7540 Eligibility for educational assistance.

* * * * *

(c) *Limitations on establishing eligibility.* (1) An individual must elect in writing whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual is a reservist who is eligible for basic educational assistance provided under 38 U.S.C. 3012, and has established eligibility to that assistance partially through service in the Selected Reserve; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. 3012 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505 followed by service in the Selected Reserve.

(2) An election under this paragraph (c) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the reservist either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(3) If a reservist is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (c)(1) and (c)(2) of this section.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c))

* * * * *

(d) * * *

(Authority: 10 U.S.C. 16132(d), 16134)

(The information collection requirements in this section have been approved by the Office

of Management and Budget under control number 2900–0594)

[FR Doc. 98–22856 Filed 8–26–98; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Parts 775, 777, and 778

National Environmental Policy Act Implementing Procedures

AGENCY: Postal Service (USPS).

ACTION: Final rule.

SUMMARY: This rule changes the procedures and categorical exclusions governing the Postal Service's compliance with the National Environmental Policy Act (NEPA). These amendments are based upon experience with existing regulations and new policies and infrastructure that have been implemented since the restructuring of the Postal Service in 1992. The changes are intended to comply with the requirements of NEPA while improving quality and reducing administrative processes and preparation.

EFFECTIVE DATE: This regulation was effective on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles A. Vidich, Environmental Coordinator, U.S. Postal Service, 8 Griffin Rd. N., Windsor, CT 06006–7030, phone (860) 285–7254, or Gary W. Bigelow, Chief Counsel, Environmental Law, 4200 Wake Forest Rd., Raleigh, NC 27668–1121, phone (919) 501–9439.

SUPPLEMENTARY INFORMATION: Historically, the U.S. Postal Service has implemented the provisions of the National Environmental Policy Act (NEPA) through policies and procedures established by the Postal Service's Facilities organization. Certainly, most of the ''major federal actions'' undertaken by the Postal Service have been associated with the construction or disposal of postal facilities. However, in recent years it has become increasingly evident that other postal organizations also have a role in implementing the provisions of NEPA. The Postal Service has revised its regulations to clarify the scope of the applicability of NEPA.

On August 11, 1997, the Postal Service published in the **Federal Register** a notice of proposed changes in the procedures and categorical exclusions of its NEPA regulations (62 FR 42958). Specifically, the Postal Service proposed revised procedures for implementing the requirements of NEPA in order to improve efficiency, promote compliance and reflect organizational changes within the Postal Service. Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service requested that comments on the proposal be submitted by September 10, 1997. No comments were received on the proposed regulation.

Technical amendments to § 775.6(a) to clarify language, improve readability, conform to changes in language regarding wetlands permit terminology, and correct a typographical error, have been incorporated into the final rule. Also typographical errors in § 775.6(e)(8) and § 775.7 have been corrected. In light of the foregoing, the Postal Service has decided to adopt the proposed revisions to its NEPA regulations.

List of Subjects

39 CFR Part 775

Environmental impact statements.

39 CFR Part 777

Real property acquisition, Relocation assistance.

39 CFR Part 778

Intergovernmental relations.

Accordingly, title 39 CFR parts 775, 777 and 778 are amended as follows:

Subchapter K—Environmental Regulations

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

1. The authority citation for 39 CFR part 775 is revised to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 et seq.; 40 CFR 1500.4.

2. The heading for subchapter K is revised to read as set forth above.

3. The heading of part 775 is revised to read as set forth above.

4. Section 775.1 is revised to read as follows:

§ 775.1 Purpose.

These procedures implement the National Environmental Policy Act (NEPA) regulations (40 CFR part 1500) issued by the Council on Environmental Quality (CEQ).

5. Section 775.3 is revised to read as follows:

§ 775.3 Responsibilities.

(a) The Chief Environmental Officer is responsible for overall development of policy regarding NEPA and other environmental policies. The officer in charge of the facilities or real estate organization is responsible for the development of NEPA policy as it affects real estate or acquisition, construction and disposal of postal facilities consistent with overall NEPA policy. Each officer with responsibility over the proposed program, project, action, or facility is responsible for compliance with NEPA as the responsible official.

(b) Postal managers will designate environmental coordinators to assist with compliance with NEPA procedures.

§§ 775.5 through 775.11 [Redesignated as §§ 775.8 through 775.14]; § 775.4(a) [Redesignated as § 775.5] and § 775.4(b) [Redesignated as § 775.6].

Sections 775.5 through 775.11 are redesignated as §§ 775.8 through 775.14.

7. Section 775.4(a) is redesignated as § 775.5 and § 775.4(b) is redesignated as § 775.6.

8. Section 775.4 is removed, and a new § 775.4 is added to read as follows:

§ 775.4 Definitions.

(a) The definitions set forth in 40 CFR part 1508 apply to this part 775.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

Approving official means the person or group of persons, who authorizes funding as established through the delegations of approval authority issued by the finance organization. That person or group of persons may not have proposed the action for which financial approval is sought.

Environmental checklist means a Postal Service form that identifies potential environmental impacts for proposed actions initiated by postal managers.

Mitigated FONSI means a FONSI which requires the implementation of specified mitigation measures in order to ensure that there are no significant impacts to the environment.

Record of environmental consideration means the Postal Service form that identifies the Postal Service's review of proposed activities under NEPA.

Responsible official means the person, or designated representative, who proposes an action and is responsible for compliance with NEPA. For larger projects, that person may not have the financial authority to approve such action. The responsible official signs the NEPA documents (FONSI, ROD) and the REC.

9. Newly redesignated § 775.5 is revised to read as follows:

§ 775.5 Classes of actions.

(a) *Actions which normally require an environment impact statement.* None,

however the Postal Service will prepare an EIS when necessary based on the factors identified in 40 CFR 1508.27.

(b) *Actions requiring an environmental assessment.* Classes of actions that will require an environmental assessment unless categorically excluded include:

(1) Any project that includes the conversion, purchase, or any other alteration of the fuel source for 25 percent or more of USPS vehicles operating with fuel other than diesel or gasoline in any carbon monoxide or ozone non-attainment area;

(2) Any action that would adversely affect a federally listed threatened or endangered species or its habitat;

(3) Any action that would directly affect public health;

(4) Any action that would require development within park lands, or be located in close proximity to a wild or scenic river or other ecologically critical area;

(5) Any action affecting the quality of the physical environment that would be scientifically highly controversial;

(6) Any action that may have highly uncertain or unknown risks on the human environment;

(7) Any action that threatens a violation of applicable federal, state, or local law or requirements imposed for the protection of the environment;

(8) New construction of a facility with vehicle maintenance or fuel dispensing capabilities, whether owned or leased;

(9) Acquisition or lease of an existing building involving new uses or a change in use to a greater environmental intensity;

(10) Real property disposal involving a known change in use to a greater environmental intensity;

(11) Postal facility function changes involving new uses of greater environmental intensity;

(12) Reduction in force involving more than 1000 positions;

(13) Relocation of 300 or more employees more than 50 miles;

(14) Initiation of legislation.

10. Newly redesignated § 775.6 is revised to read as follows:

§ 775.6 Categorical exclusions.

(a) The classes of actions in this section are those that the Postal Service has determined do not individually or cumulatively have a significant impact on the human environment. To be categorically excluded, it must be determined that a proposed action fits within a class listed and there are no extraordinary circumstances that may affect the significance of the proposal. The action must not be connected to other actions with potentially significant impacts or is not related to other proposed actions with potentially significant impacts. Extraordinary circumstances are those unique situations presented by specific proposals, such as scientific controversy about the environmental impacts of the proposal, uncertain effects or effects involving unique or unknown risks.

(b) Categorical exclusions relating to general agency actions:

(1) Policy development, planning and implementation that relate to routine activities such as personnel, organizational changes or similar administrative functions.

(2) Routine actions, including the management of programs or activities necessary to support the normal conduct of agency business, such as administrative, financial, operational and personnel action that involve no commitment of resources other than manpower and funding allocations.

(3) Award of contracts for technical support services, management and operation of a government owned facility, and personal services.

(4) Research activities and studies and routine data collection when such actions are clearly limited in context and intensity.

(5) Educational and informational programs and activities.

(6) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes that do not affect more than 1,000 positions.

(7) Postal rate or mail classification actions, address information system changes, post office name and zip code changes.

(8) Property protection, law enforcement and other legal activities undertaken by the Postal Inspection Service, the Law Department, the Judicial Officer, and the Inspector General.

(9) Activities related to trade representation and market development activities abroad.

(10) Emergency preparedness planning activities, including designation of on-site evacuation routes.

(11) Minor reassignment of motor vehicles and purchase or deployment of motor vehicles to new locations that do not adversely impact traffic safety, congestion or air quality.

(12) Procurement or disposal of mail handling or transport equipment.

(13) Acquisition, installation, operation, removal or disposal of communication systems, computers and data processing equipment.

(14) Postal facility function changes not involving construction, where there are no substantial relocation of employees, or no substantial increase in the number of motor vehicles at a facility.

(15) Closure or consolidation of post offices under 39 U.S.C. 404(b).

(16) Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include but are not limited to, adding filtration and recycling systems to allow reuse of vehicle or machine oil, setting up sorting areas to improve process efficiency, and segregating waste streams previously mingled and assigning new identification codes to the two resulting streams.

(17) Actions which have an insignificant effect upon the environment as established in a previously written Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS). Such repetitive actions shall be considered ''reference actions'' and a record of all decisions concerning these ''reference actions'' shall be maintained by the Chief Environmental Officer or designee. The proposed action must be essentially the same in context and the same or less in intensity or create fewer impacts than the ''reference action'' previously studied under an EA or EIS in order to qualify for this exclusion.

(18) Rulemakings that are strictly procedural, and interpretations and rulings with existing regulations, or modifications or rescissions of such interpretations and rulings.

(c) Categorical exclusions relating to emergency or restoration actions:

(1) Any cleanup, remediation or removal action conducted under the provisions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA), any asbestos abatement actions regulated under the provisions of the Occupational Safety and Health Act (OSHA), or the Clean Air Act or any PCB transformer replacement or any lead based paint abatement actions regulated under the provisions of the Toxic Substances Control Act (TSCA), OSHA or RCRA.

(2) Testing associated with environmental cleanups or site investigations.

(d) Categorical exclusions relating to maintenance or repair actions at existing facilities:

(1) Siting, construction or operation of temporary support buildings or support structures.

(2) Routine maintenance and minor activities, such as fencing, that occur in floodplains or state and local wetlands

or pursuant to the nationwide, regional or general permitting process of the US Army Corps of Engineers.

(3) Routine actions normally conducted to protect and maintain properties and which do not alter the configuration of the building.

(4) Changes in configuration of buildings required to promote handicapped accessibility pursuant to the Architectural Barriers Act.

(5) Repair to, or replacement in kind or equivalent of building equipment or components (e.g., electrical distribution, HVAC systems, doors, windows, roofs, etc.).

(6) Internal modifications or improvements to structure, or buildings to accommodate mail processing, computer, communication or other similar types of equipment or other actions which do not involve modification to the external walls of the facility.

(7) Joint development and/or joint use projects that only involve internal modifications to an existing facility.

(8) Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

(9) Actions which require concurrence or approval of another federal agency where the action is a categorical exclusion under the NEPA regulations of that federal agency.

(e) Categorical exclusions relating to real estate actions.

(1) Obtaining, granting, disposing, or changing of easements, licenses and permits, rights-of-way and similar interests.

(2) Extension, renewal, renegotiation, or termination of existing lease agreements.

(3) Purchase of Postal Service occupied leased property where the planned postal uses do not differ significantly from the past uses of the site.

(4) Acquisition or disposal of existing facilities and real property where the planned uses do not differ significantly from past uses of the site.

(5) Acquisition of real property not connected to specific facility plans or when necessary to protect the interests of the Postal Service in advance of final project approval. This categorical exclusion only applies to the acquisition. Any subsequent use of the site for a facility project must be considered under this part.

(6) Disposal through sale or outlease of unimproved real property.

(7) Disposal through sale, outlease, transfer or exchange of real property to other federal or state agencies.

(8) Acquisition and disposal through sale, lease, transfer or exchange of real property that does not involve an increase in volumes, concentrations, or discharge rates of wastes, air emissions, or water effluents, and that under reasonably foreseeable uses, have generally similar environmental impacts as compared to those before the acquisition or disposal. A determination that the proposed action is categorically excluded can be based upon previous ''reference actions'' documented under § 775.6(b)(17).

(9) Acquisition and disposal through sale, lease, transfer, reservation or exchange of real property for nature and habitat preservation, conservation, a park or wildlife management.

(10) New construction, Postal Service owned or leased, or joint development and joint use projects, of any facility unless the proposed action is listed as requiring an EA in § 775.5.

(11) Expansion or improvement of an existing facility where the expansion is within the boundaries of the site or occurs in a previously developed area unless the proposed action is listed as requiring an EA in § 775.5.

(12) Construction and disturbance pursuant to a nationwide, regional or general permit issued by the US Army Corps of Engineers.

(13) Any activity in floodplains being regulated pursuant to § 775.6 and is not listed as requiring an EA in § 775.5.

11. A new § 775.7 is added.

§ 775.7 Planning and early coordination.

Early planning and coordination among postal functional groups is required to properly consider environmental issues that may be attributable to the proposed action. Operational and facility personnel must cooperate in the early concept stages of a program or project. If it is determined that more than one postal organization will be involved in any action, a lead organization will be selected to complete the NEPA process before any NEPA documents are prepared. If it is determined that a project has both real estate and non-real estate actions, the facilities functional organization will take the lead.

12. In newly redesignated § 775.9, paragraphs (a)(1) through (4), the first sentence in (b)(1), and paragraphs (b)(2), (b)(3) introductory text, and (b)(3)(i) are revised and a new sentence is added after the first sentence in paragraph (b)(1) to read as follows:

§ 775.9 Environmental evaluation process.

(a) All Actions—(1) Assessment of actions. An environmental checklist may be used to support a record of environmental consideration as the written determination that the proposed action does not require an environmental assessment. An environmental assessment must be prepared for each proposed action, except that an assessment need not be made if a written determination is made that:

(i) The action is one of a class listed in § 775.6, Categorical Exclusions, and

(ii) The action is not affected by extraordinary circumstances which may cause it to have a significant environmental effect, or

(iii) The action is a type that is not a major federal action with a significant impact upon the environment.

(2) *Findings of no significant impact.* If an environmental assessment indicates that there is no significant impact of a proposed action on the environment, an environmental impact statement is not required. A ''finding of no significant impact'' (FONSI) is prepared and published in accordance with § 775.13. When the proposed action is approved, it may be accomplished without further environmental consideration. A FONSI document briefly presents the reasons why an action will not have a significant effect on the human environment and states that an environmental impact statement will not be prepared. It must refer to the environmental assessment and any other environmentally pertinent documents related to it. The assessment may be included in the finding if it is short, in which case the discussion in the assessment need not be repeated in the finding. The FONSI may be a mitigated FONSI in which case the required mitigation factors should be listed in the FONSI. The use of a mitigated FONSI is conditioned upon the implementation of the identified mitigation measures in the EA that support the FONSI. Unless the mitigation measures are implemented by the responsible official, the use of an EA in lieu of an EIS is not acceptable.

(3) Impact statement preparation decision and notices. If an environmental assessment indicates that a proposed major action would have a significant impact on the environment, a notice of intent to prepare an impact statement is published (see § 775.13) and an environmental impact statement is prepared.

(4) Role of impact statement in decision making. An environmental impact statement is used, with other analyses and materials, to decide which alternative should be pursued, or whether a proposed action should be abandoned or other courses of action

pursued. See § 775.12 for restrictions on the timing of this decision.

* * * * *

(b) * * *

(1) The environmental assessment of any action which involves the construction or acquisition of a new mail processing facility must include reasonable alternatives to the proposed action and not just consideration of contending sites for a facility. This process must be started early in the planning of the action.* * *

(2) When an environmental assessment indicates that an environmental impact statement may be needed for a proposed facility action, the responsible officer will make the decision whether to prepare an environmental impact statement for presentation to the Capital Investment Committee, and to the Board of Governors if the Board considers the proposal.

(3) If an environmental impact statement is presented to the Committee or the Board, and an analysis indicates that it would be more cost-effective to proceed immediately with continued control of sites, (including advance acquisition, if necessary, and where authorized by postal procedures), environmental impact statement preparation, and project designs, a budgetary request will include authorization of funds to permit:

(i) The preparation of an impact statement encompassing all reasonable alternatives and site alternatives,

* * * * *

13. In newly redesignated § 775.10, paragraph (a)(4) is added to read as follows:

§ 775.10 Environmental assessments.

(a) * * *

(4) A list of applicable environmental permits necessary to complete the proposed action.

14. Newly redesignated § 775.11 is amended by revising the last sentence of paragraph (a)(1) and by revising paragraphs (b)(2)(ii), (c)(2), (c)(4), (c)(5) introductory text, (c)(5)(iv), and (d)(1) to read as follows:

§ 775.11 Environmental impact statements.

(a) * * *

(1) * * * Notice is given in accordance with § 775.13.

* * * * *

(b) * * *

(2) * * *

(ii) Contain discussions of impacts in proportion to their significance. Insignificant impacts eliminated during the process under § 775.11(a) to determine the scope of issues must be discussed only to the extent necessary to state why they will not be significant.

* * * * *

(c) * * *

(2) Summary. The section should compare and summarize the findings of the analyses of the affected environment, the environmental impacts, the environmental consequences, the alternatives, and the mitigation measures. The summary should sharply define the issues and provide a clear basis for choosing alternatives.

* * * * *

(4) Proposed action. This section should clearly outline the need for the EIS and the purpose and description of the proposed action. The entire action should be discussed, including connected and similar actions. A clear discussion of the action will assist in consideration of the alternatives.

(5) *Alternatives and mitigation.* This portion of the environmental impact statement is vitally important. Based on the analysis in the Affected Environment and Environmental Consequences section (see § 775.11(c)(6)), the environmental impacts and the alternatives are presented in comparative form, thus sharply defining the issues and providing a clear basis for choosing alternatives. Those preparing the statement must:

* * * * *

(iv) Describe appropriate mitigation measures not considered to be an integral part of the proposed action or alternatives. See § 775.9(a)(7).

* * * * *

(d) * * *

(1) Any completed draft environmental impact statement which is made the subject of a public hearing, must be made available to the public as provided in § 775.12, of this chapter at least 15 days in advance of the hearing.

* * * * *

15. In newly redesignated § 775.13, paragraph (a)(4) is revised to read as follows:

§ 775.13 Public notice and information.

(a) * * *

(4) A copy of every notice of intent to prepare an environmental impact statement must be furnished to the Chief Counsel, Legislative, Law Department, who will have it published in the **Federal Register**.

* * * * *

16. In newly redesignated § 775.14, paragraph (b) is revised to read as follows:

§ 775.14 Hearings.

* * * * *

(b) The distribution and notice requirements of §§ 775.11(d)(1) and 775.13 must be complied with whenever a hearing is to be held.

17. A heading for Subchapter L is added to read as follows:

Subchapter L—Special Regulations

PARTS 777 AND 778—[REDESIGNATED TO SUBCHAPTER L]

18. Parts 777 and 778 are redesignated from Subchapter K to Subchapter L.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–22936 Filed 8–26–98; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND–001–0002a & ND–001–0004a; FRL–6150–6]

Clean Air Act Approval and Promulgation of State Implementation Plan for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA approves certain State implementation plan (SIP) revisions submitted by the North Dakota Governor with letters dated January 9, 1996 and September 10, 1997. The January 9, 1996 revisions are specific to a rule regarding emissions of sulfur compounds (the remainder of the State's January 9, 1996 submittal was handled separately). The September 10, 1997 revisions are specific to air pollution control rules regarding general provisions and emissions of particulate matter and organic compounds. Revisions to the minor source construction permit program will be handled separately. In addition, the September 10, 1997 submittal included direct delegation requests for emission standards for hazardous air pollutants (NESHAP) and emission standards for hazardous air pollutants for source categories, as well as the State's plan for existing municipal solid waste landfills, which were all handled separately.

Finally, EPA is providing notice that it granted delegation of authority to North Dakota on May 28, 1998, to implement and enforce the New Source

Performance Standards (NSPS) promulgated in 40 CFR Part 60, as of October 1, 1996 (excluding subpart Eb).

DATES: This direct final rule is effective on October 26, 1998 without further notice, unless EPA receives adverse comment by September 28, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202–2405. Copies of the State's submittal and other relevant documents are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202–2405 and the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58506–5520.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION:

I. Background

The Governor of North Dakota submitted various revisions to the State's air pollution control rules with letters to EPA dated January 9, 1996, and September 10, 1997. These revisions were necessary, for the most part, to make the rules consistent with Federal requirements or for clarification purposes.

The bulk of the January 9, 1996 SIP revisions were approved by EPA on April 21, 1997 (62 FR 19224). That submittal also included a direct delegation request for emission standards for hazardous air pollutants for source categories, which was handled separately. Finally, action on one rule, regarding emissions of sulfur compounds, was delayed pending the State's provision of technical support documentation to justify EPA's approval of the revision. That documentation now has been provided to EPA's satisfaction and is discussed below in further detail.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the North Dakota Department of Health (NDDOH), after providing adequate notice, held public hearings on July 25, 1995 and January 14, 1997 to address the respective revisions to the SIP and Air Pollution Control Rules. Following the public hearings, public comment period, and completion of legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the rule revisions, which became effective on January 1, 1996, and September 1, 1997, respectively.

The Governor of North Dakota submitted the revisions to the SIP with letters dated January 9, 1996, and September 10, 1997. The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittals were found to be complete and letters dated February 13, 1996, and November 5, 1997, were forwarded to the Governor indicating the completeness of the respective submittals and the next steps to be taken in the review process.

2. January 9, 1996 Revisions—Emissions of Sulfur Compounds

As discussed above, the January 9, 1996 submittal contained various revisions which were approved by EPA on April 21, 1997 (62 FR 19224), or handled separately. The one remaining revision regarding emissions of sulfur compounds is being addressed in this document and involves North Dakota Air Pollution Control Rule 33–15–06, Emissions of Sulfur Compounds.

a. Chapter 33–15–06 Emissions of Sulfur Compounds. Restricted. Language was added to this chapter to allow the State to consider treaters at an oil or natural gas production facility, as defined in Chapter 33–15–20 (Control of Emissions from Oil and Gas Well Production Facilities), as ''industrial process equipment.'' Prior to this revision, treaters were considered fuel burning equipment and were subject to a SO_2 emissions limit of three pounds per million Btu on a one hour block average basis (Chapter 33–15–06–01.2. Restrictions Applicable to Fuel Burning Installations). This revision is considered a SIP relaxation because treaters will now have a less stringent emissions limit than prior to the revision. Treaters will now be subject to Chapter 33–15–06–02.2. Concentration of Sulfur Compounds in Emissions Restricted, which directs the State to establish an emissions limit if it is determined that industrial process equipment is causing the ambient air quality standards for SO_2 in Chapter 33–15–02 or the prevention of significant deterioration increments for SO_2 of Chapter 33–15–15 to be exceeded.

In a March 28, 1997 letter from Richard Long, EPA, to Dana Mount, NDDOH, EPA advised the State that a demonstration was needed to determine if the National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) increments would be protected in light of this relaxation. In letters from the NDDOH dated April 8, July 30, and September 9, 1997, the State provided EPA with adequate technical support information to demonstrate that the NAAQS and PSD increments indeed would be protected. Some of the rationale follows.

The State's reason for changing the classification of the treater at oil wells from fuel burning equipment to industrial process equipment was to gain a beneficial use for sour gas produced at the well. In order to comply with the previous emissions limit, propane or sweet natural gas had to be brought into the treater and the sour gas burned in the flare. This practice did not make sense from an economic, energy conservation, or practical standpoint. Now, sour gas that was once burned in the flare can be used as fuel to operate the treater. Therefore, as a practical matter, there should be no increase in SO_2 emissions since the fuel is just being burned in a different place.

Given that oil wells contribute only minor SO_2 emissions in the State (approximately 3% of the total, of which 1.8% is contributed by treaters, and this percentage has been steadily declining and is expected to further decline in the future), that ambient air quality

monitoring has never detected a violation of the SO_2 NAAQS due to an oil production facility (the NDDOH currently operates two monitoring sites in ''oil country'' and requires industry to operate four additional sites), and that there are no oil wells that are major sources for SO_2 under the PSD regulations in North Dakota, the State believes that the change in classification for the treater will not adversely affect the NAAQS or PSD increments. It will, however, have the benefit of conserving energy.

Oil well SO_2 emissions have been decreasing since the major development of oil wells in North Dakota is in the southwest corner of the State where the H_2S content is less than that found in older wells which are going out of production. The NDDOH provided a 1996 SO_2 emissions inventory for the southwest counties where the most oil and gas well development is occurring. In addition, a commitment was provided to review the regulations should emissions of SO_2 from oil and gas well development increase significantly above the current emission rate.

The NDDOH tracks oil wells through a database which is shared with the State's Oil and Gas Division. From this database, the amount of SO_2 emissions from each production facility is determined. The NDDOH has provided a commitment to review relevant areas of the State if SO_2 emissions increases are noted from oil and gas production facilities. The reporting system for the above-mentioned database will be set up to provide emissions on a county-wide basis and an annual review of emissions from each county will be conducted to determine whether any significant increases have taken place.

Regarding SO_2 increment consumption, the State estimates that actual SO_2 emissions from oil wells on the minor source baseline date (*i.e.*, December 19, 1977) were approximately 12,000 tons per year. In 1997, emissions were less than 6000 tons per year. In areas where there is a significant amount of SO_2 emissions from oil wells, the State believes the decrease in emissions offsets most increment consumption.

Based on the information provided by the State in the three letters mentioned above, EPA agrees with the State's conclusion that the change to Chapter 33–15–06 is of minor significance and will not endanger the SO_2 NAAQS or PSD increments. Therefore, this revision is approvable. Please refer to the Technical Support Document (TSD) accompanying this action for a detailed discussion of the State's rationale.

3. September 10, 1997 Revisions

The September 10, 1997 submittal included revisions to certain chapters of the North Dakota Air Pollution Control Rules which will be handled separately. These revisions involved the minor source construction permit program (33–15–14) and direct delegation requests for emissions standards for hazardous air pollutants (33–15–13) and emission standards for hazardous air pollutants for source categories (33–15–22), as well as the State's plan for existing municipal solid waste landfills. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below). Finally, the submittal addressed revisions to general provisions and emissions of particulate matter and organic compounds, which involve the following chapters of the North Dakota Air Pollution Control Rules to be addressed in this document: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; and 33–15–07 Control of Organic Compound Emissions.

a. Chapter 33–15–01 General Provisions. Revisions to this chapter include administrative corrections to 33–15–01–13.2(b) and 33–15–01–15.2 and the addition of language to the enforcement requirements in 33–15–01–17.3 to clarify that no person may knowingly provide inaccurate information on required documents or regarding required monitoring and methods. These revisions are either minor in nature or consistent with Federal requirements, and therefore, approvable.

This chapter was also revised to update the definition of volatile organic compounds (''VOCs'') in 33–15–01–04.49 to match the Federal definition. At the date of this submittal, the State's revision was consistent with federal requirements and, therefore, is being approved as submitted on September 10, 1997.

However, on April 9, 1998, EPA published a revised definition of volatile organic compounds (63 FR 17331), which became effective on May 11, 1998. EPA's revised definition excludes numerous compounds from the definition of VOC on the basis of negligible reactivity, and thus, no contribution to tropospheric ozone formation. The State's current definition does not exclude some of these compounds. Therefore, the State's definition of VOC provides for the regulation of some compounds which are no longer considered VOCs by EPA. North Dakota is advised of EPA's most recent VOC definition and future SIP revisions should reflect it accordingly.

b. Chapter 33–15–05 Emissions of Particulate Matter. Restricted. The subsection regarding incinerator rules for crematoriums was modified to reduce the required temperature in the secondary chamber of a crematorium from 1800 degrees Fahrenheit to 1600 degrees Fahrenheit. The original requirements for opacity, temperature retention time, and monitoring were not changed with this revision. EPA believes that these parameters, along with a 1600 degree Fahrenheit temperature in the secondary chamber, allow for proper combustion to occur. The 1600 degree Fahrenheit temperature requirement is well above what is needed for good volatile organic compound emissions control.

Since there is no foreseeable increase in emissions resulting from this change in temperature requirement for the secondary chamber, EPA believes this revision is approvable.

c. Chapter 33–15–07 Control of Organic Compounds Emissions. This revision was simply an administrative correction to a referenced subsection under ''Scope.'' It is minor in nature and approvable.

4. Delegation of Authority for NSPS

The original delegation of authority for NSPS to North Dakota was made by EPA on October 13, 1976 (41 FR 44859, 44884). Later, North Dakota submitted its NSPS regulations for approval by EPA through the SIP process (58 FR 5294, January 21, 1993). With the September 10, 1997 submittal, the State has indicated that it prefers to once more obtain authority for implementation and enforcement of the NSPS through the delegation of authority process pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. § 7411(c), as amended. Pursuant to that request, on May 28, 1998, delegation was given with the following letter:

Honorable Edward T. Schafer
Governor of North Dakota, State Capitol, Bismarck, North Dakota 58505–0001

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Schafer: In a September 10, 1997, letter from you and a September 11, 1997, letter from Francis Schwindt, North Dakota Department of Health, the State of North Dakota requested delegation of authority for the Clean Air Act New Source Performance Standards (NSPS) as in effect on October 1, 1996. The original delegation of authority for NSPS to North Dakota was made by EPA in 1976. Later, North Dakota submitted its NSPS regulations for approval by EPA through the State Implementation Plan (SIP) process. The above-mentioned letters indicate that the State prefers to once more obtain authority for implementation

and enforcement of the NSPS through the delegation of authority process pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. § 7411(c), as amended. The State's NSPS regulations, promulgated in Chapter 33–15–12 of the North Dakota Administrative Code, incorporate by reference the Federal NSPS in 40 CFR part 60 as in effect on October 1, 1996, with the exception of subpart Eb, which the State has not adopted.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those standards, so long as the State's regulations are not less stringent than the Federal regulations. EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of North Dakota. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation include all NSPS subparts in 40 CFR part 60, as in effect on October 1, 1996 (with the exception of subpart Eb). Note that this delegation does not include the emission guidelines in subparts Ca, Cb, Cc, and Cd. These subparts require state plans which are approved under a separate process pursuant to Section 111(d) of the Act.

(B) Not all authorities of NSPS can be delegated to states under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. To the best of our knowledge, the following contain the authorities in 40 CFR part 60 that EPA cannot delegate to the State:

40 CFR part 60 subpart	Section(s)
A	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da	60.45a.
Db	60.44b(f), 60.44b(g), 60.49b(a)(4).
Dc	60.48c(a)(4).
J	60.105(a)(13)(iii), 60.106(i)(12).
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O	60.153(e).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3) and 60.335(a).
VV	60.482–1(c)(2) and 60.484.
WW	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX	60.502(e)(6).
AAA	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e), and 60.539.
BBB	60.543(c)(2)(ii)(B).
DDD	60.562–2(c).
GGG	60.592(c).
III	60.613(e).
JJJ	60.623.
KKK	60.634.
NNN	60.663(e).
QQQ	60.694.
RRR	60.703(e).
SSS	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a), and 60.716.
TTT	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e), and 60.725(b).
VVV	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW	60.754(a)(5).

(C) As 40 CFR Part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 30, 1976, to the Honorable Arthur A. Link, then Governor of North Dakota, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 2. In addition, if at any time there is a conflict between a State and a Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 7. A copy of the August 30, 1976 letter was published in the notices section of the **Federal Register** on October 13, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new and modified sources shall be submitted to the State of North Dakota (41 FR 44859). Copies of the **Federal Register** notices are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please call me, or have your staff contact Richard Long, Director of our Air Program, at 303–312–6005.

Sincerely,

William P. Yellowtail,

Regional Administrator.

Enclosures:

cc: Francis Schwindt, ND Department of Health; Dana Mount, ND Department of Health

Given that the State now has delegation of authority for NSPS, the State's NSPS regulations, promulgated in Chapter 33–15–12 of the North Dakota Administrative Code, are removed from the federally-approved SIP.

III. Final Action

EPA is approving North Dakota's SIP revisions, as submitted by the Governor with letters dated January 9, 1996, and September 10, 1997. The revision in the January 9, 1996 submittal which is being approved in this document is the revision to North Dakota Air Pollution Control Rule 33–15–06, Emissions of Sulfur Compounds Restricted. The remainder of the January 9, 1996 submittal was handled separately. The revisions of the September 10, 1997 submittal which are being approved in this document involve the following chapters of the North Dakota Air Pollution Control Rules: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; and 33–15–07 Control of Organic Compounds Emissions.

In addition, the September 10, 1997 submittal included revisions to Chapter 33–15–14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (section specific to minor source construction permit program), the State's 111(d) plan for existing municipal solid waste landfills, and requests for direct delegation of Chapters 33–15–13, Emission Standards for Hazardous Air Pollutants, and 33–15–22, Emission Standards for Hazardous Air Pollutants for Source Categories, which will all be handled separately.

Finally, as requested by the State with its September 10, 1997 submittal, EPA is providing notice that it granted delegation of authority to North Dakota on May 28, 1998, to implement and enforce the NSPS promulgated in 40 CFR Part 60, promulgated as of October 1, 1996 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60. Given that North Dakota now has delegation of authority for NSPS, EPA is removing Chapter 33–15–12, Standards of Performance for New Stationary Sources, from the federally-approved SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 26, 1998 without further notice unless the Agency receives adverse comments by September 28, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 26, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review,'' review.

The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Air pollution control, Aluminum, ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: August 14, 1998.

Jack McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(30) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(30) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with letters dated January 9, 1996 and September 10, 1997. The revisions address air pollution control rules regarding general provisions and emissions of particulate matter, sulfur compounds, and organic compounds. (i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rule Emissions of Sulfur Compounds Restricted, 33–15–06–01, effective January 1, 1996.

(B) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–04.49, 33–15–01–13.2(b), 33–15–01–15.2, and 33–15–01–17.3; Emissions of Particulate Matter Restricted 33–15–05–03.3.4; and Control of Organic Compound Emissions 33–15–07–01.1; effective September 1, 1997.

(ii) Additional material.

(A) An April 8, 1997 letter from Dana Mount, North Dakota Department of Health, to Richard Long, EPA, to provide technical support documentation regarding the revisions to Chapter 33–15–06, Emissions of Sulfur Compounds Restricted.

(B) A July 30, 1997 letter from Dana Mount, North Dakota Department of Health, to Amy Platt, EPA, to provide technical support documentation regarding the revisions to Chapter 33–15–06, Emissions of Sulfur Compounds Restricted.

(C) A September 9, 1997 letter from Dana Mount, North Dakota Department of Health, to Larry Svoboda, EPA, to provide technical support documentation regarding the revisions to Chapter 33–15–06, Emissions of Sulfur Compounds Restricted.

3. A new § 52.1835 is added to read as follows:

§ 52.1835 Change to approved plan.

North Dakota Administrative Code Chapter 33–15–12, Standards of Performance for New Stationary Sources, is removed from the approved plan. This change is a result of the State's September 10, 1997 request for delegation of authority to implement and enforce the Clean Air Act New Source Performance Standards (NSPS) promulgated in 40 CFR Part 60, as in effect on October 1, 1996 (except subpart Eb, which the State has not adopted). EPA granted that delegation of authority on May 28, 1998.

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

Subpart A—General Provisions

2. In § 60.4(c) the table entitled ''Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]'' is amended by revising the column heading for ''ND'' and by revising the entry for ''WWW—Municipal Solid Waste Landfills'' to read as follows:

§ 60.4 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	CO	MT[1]	ND	SD[1]	UT[1]	WY
*	*	*	*	*	*	*
WWW ..... Municipal Solid Waste Landfills						
*	*	*	*	*	*	*

(*) Indicates approval of State regulation.
(1) Indicates approval of New Source Performance as part of the State Implementation Plan (SIP).

[FR Doc. 98–22899 Filed 8–26–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[MO 045–1045; FRL–6150–8]

Approval and Promulgation of Implementation Plans and Section 111(d) Plan; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve certain portions of new Missouri rule 10 CSR 10–6.020 as a revision to the State Implementation Plan (SIP). This rule consolidates the SO_2 requirements previously contained in eight separate rules into one statewide rule. The EPA is taking final action to rescind eight rules which are replaced by the new rule, and the EPA is taking final action to approve Missouri's Clean Air Act (CAA) section 111(d) plan for sulfuric acid mist plants which is now contained in the new rule.

DATES: This rule is effective on September 28, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: Revisions were made to Missouri's SO_2 rules in response to an SO_2 rule enforceability review conducted by the EPA in 1991. A consolidated rule was presented at a public hearing on March 28, 1996. After addressing comments from the hearing and public comment period, the state adopted rule 10 CSR 10–6.260 which became effective on August 30, 1996.

On August 12, 1997, Missouri submitted a request to amend the SIP by

adding the new rule 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds.

In conjunction with Missouri's request for SIP approval of 10 CSR 10–6.260, Missouri also requests rescission of eight existing rules dealing with sulfur compound emissions (10 CSR 10–2.160, 2.200, 3.100, 3.150, 4.150, 4.190, 5.110, and 5.150). These eight rules were rescinded by Missouri effective July 30, 1997.

Missouri simplified the SO_2 emission requirements by consolidating all of the source-specific emission limitations, tests methods, and monitoring requirements for the different geographical areas into one rule: 10 CSR 10–6.260. The rule is a combination of plans which contain requirements that have been previously approved as protecting the SO_2 NAAQS. This new rule does not change the emission limits contained in the existing eight rules to be rescinded, but does contain enforceable emission limits, appropriate compliance methods, and requires recordkeeping sufficient to determine compliance.

Section (4) of the rule requires affected sources to comply directly with the SO_2 National Ambient Air Quality Standard (NAAQS). In general, the EPA does not directly enforce the NAAQS. Section 110 of the CAA requires states to develop plans which contain enforceable emission limitations and other such measures as required to protect the NAAQS. Consequently, the EPA will not take action on section (4); however, the EPA continues to assert that it is a state's prerogative to protect air quality using all necessary and practical means.

Section (3) of this rule also contains the state of Missouri's section 111(d) plan as it applies to sulfuric acid mist plant emissions. Section (3) replaces the comparable restrictions in Missouri's rules, 10 CSR 10–3.100, Restriction of Emission of Sulfur Compounds; and 10 CSR 10–5.150, Emission of Certain Sulfur Compounds Restricted, to be rescinded. Section 111(d) of the CAA and 40 CFR Part 60, Subpart B, require each state to adopt and submit a plan to establish emission controls for existing sources, which would be subject to the EPA's new source performance standards if these sources were new sources.

No comments were received in response to the public comment period regarding this rule action.

For more background information, the reader is referred to the proposal for this rulemaking published on March 18, 1998, at 63 FR 13154.

I. Final Action

The EPA is taking final action to approve, as a revision to the SIP, under 40 CFR Part 52, rule 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds, submitted by the state of Missouri on August 12, 1997, except sections (3) and (4).

The EPA is taking final action to approve, under 40 CFR Part 62, section (3) of rule 10 CSR 10–6.260 pursuant to section 111(d) of the CAA.

The EPA is taking no action on section (4) of rule 10 CSR 10–6.260.

The EPA is also taking final action to rescind SIP rules 10 CSR 10–2.160, Restriction of Emission of Sulfur Compounds; 10 CSR 10–2.200, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–3.100, Restriction of Emission of Sulfur Compounds; 10 CSR 10–3.150, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–4.150 Restriction of Emissions of Sulfur Compounds; 10 CSR 10–4.190, Restriction of Emissions of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–5.110, Restriction of Emissions of Sulfur Dioxide for Uses of Fuel; and 10 CSR 10–5.150, Emission of Certain Sulfur Compounds Restricted.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review. The final rule is not subject to Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Sulfur oxides.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfuric acid plants, Sulfuric oxides.

Dated: August 3, 1998.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(108) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(C) * * *

(108) On August 12, 1997, the Missouri Department of Natural Resources (MDNR) submitted a new rule which consolidated the SO_2 rules into one and rescinded eight existing rules dealing with sulfur compounds.

(i) Incorporation by reference.

(A) Regulation 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds, except Section (4), Restriction of Concentration of Sulfur Compounds in the Ambient Air, and Section (3), Restriction of Concentration of Sulfur Compounds in Emissions, effective on August 30, 1996.

(B) Rescission of rules 10 CSR 10–2.160, Restriction of Emission of Sulfur Compounds; 10 CSR 10–2.200, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–3.100, Restriction of Emission of Sulfur Compounds; 10 CSR 10–3.150, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–4.150, Restriction of Emissions of Sulfur Compounds; 10 CSR 10–4.190, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–5.110, Restrictions of Emission of Sulfur Dioxide for Use of Fuel; and 10 CSR 10–5.150, Emission of Certain Sulfur Compounds Restricted; effective July 30, 1997.

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Section 62.6350 is amended by adding paragraph (b)(3) to read as follows:

§ 62.6350 Identification of plan.

* * * * *

(b) * * *

(3) A revision to Missouri's 111(d) plan for Sulfuric Acid Mist from Existing Sulfuric Acid Production Plants which was effective on August 30, 1996. This revision incorporates the 111(d) requirements from two existing regulations into a new consolidated regulation.

[FR Doc. 98–22901 Filed 8–26–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7252]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Unincorporated Areas.	July 24, 1998, July 31, 1998, *Scottsdale Progress-Tribune*.	The Honorable Janice K. Brewer, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	June 30, 1998	040037
Maricopa	Unincorporated Areas.	June 11, 1998, June 18, 1998, *Arizona Republic*.	The Honorable Don Stapley, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	May 15, 1998	040037
Maricopa	Town of Paradise Valley.	June 11, 1998, June 18, 1998, *Arizona Republic*.	The Honorable Marian Davis, Mayor, Town of Paradise Valley, 6401 East Lincoln Drive, Paradise Valley, Arizona 85253.	May 15, 1998	040049
Maricopa	City of Phoenix	June 11, 1998, June 18, 1998, *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.	May 15, 1998	040051
Pima	Unincorporated Areas.	July 2, 1998, July 9, 1998, *Arizona Daily Star*.	The Honorable Mike Boyd, Chairman, Pima County Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	May 27, 1998	040073
Maricopa	City of Scottsdale	June 11, 1998, June 18, 1998, *Arizona Republic*.	The Honorable Sam Kathryn Campana, Mayor, City of Scottsdale, P.O. Box 1000, Scottsdale, Arizona 85252.	May 15, 1998	045012
Maricopa	City of Scottsdale	July 2, 1998, July 9, 1998, *Scottsdale Progress-Tribune*.	The Honorable Sam Kathryn Campana, Mayor, City of Scottsdale, P.O. Box 1000, Scottsdale, Arizona 85252–1000.	June 2, 1998	045012
Maricopa	City of Scottsdale	July 24, 1998, July 31, 1998, *Scottsdale Progress-Tribune*.	The Honorable Sam Kathryn Campana, Mayor, City of Scottsdale, P.O. Box 1000, Scottsdale, Arizona 85252–1000.	June 30, 1998	045012
Maricopa	City of Tempe	June 11, 1998, June 18, 1998, *Arizona Republic*.	The Honorable Neil Giuliano, Mayor, City of Tempe, P.O. Box 5002, Tempe, Arizona 85280.	May 15, 1998	040054
California:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riverside	Agua Caliente Band of Cahuilla Indians Tribe.	June 18, 1998, June 25, 1998, *Desert Sun*.	The Honorable Richard M. Milanovich, Chairman, Tribal Council, Agua Caliente Band of Cahuilla Indians, 600 East Tahquitz Canyon Way, Palm Springs, California 92262.	May 22, 1998	060763
Riverside	City of Cathedral City.	June 18, 1998, June 25, 1998, *The Press-Enterprise*.	The Honorable David W. Berry, Mayor, City of Cathedral City, P.O. Box 5001, Cathedral City, California 92235–5001.	May 22, 1998	060704
Contra Costa ..	City of Danville	June 18, 1998, June 25, 1998, *San Ramone Valley Times*.	The Honorable Dick Waldo, Mayor, City of Danville, 510 La Gonda Way, Danville, California 94526.	May 20, 1998	060707
Solano	City of Dixon	June 10, 1998, June 17, 1998, *Dixon Tribune*.	The Honorable Don Erickson, Mayor, City of Dixon, 600 East ''A'' Street, Dixon, California 95620–3697.	May 11, 1998	060369
Riverside	City of Palm Springs.	June 18, 1998, June 25, 1998, *Desert Sun*.	The Honorable Lloyd Maryanov, Mayor, City of Palm Springs, P.O. Box 2743, Palm Springs, California 92263.	May 22, 1998	060257
San Diego	Unincorporated Areas.	June 9, 1998, June 16, 1998, *San Diego Daily Transcript*.	The Honorable Greg Cox, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	May 13, 1998	060284
Jefferson	City of Westminster.	July 23, 1998, July 30, 1998, *Westminster Window*.	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80030.	June 22, 1998	080008
Iowa: Polk	City of Ankeny	July 15, 1998, July 22, 1998, *The Des Moines Register*.	The Honorable Merle Johnson, Mayor, City of Ankeny, 1605 North Ankeny Boulevard, Suite 200, Ankeny, Iowa 50021.	October 20, 1998	190226
Missouri: St. Louis	Unincorporated Areas.	June 11, 1998, June 18, 1998, *St. Louis Post-Dispatch*.	The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central Executive, Clayton, Missouri 63105.	September 16, 1998.	290327
Montana: Yellowstone.	City of Billings	July 9, 1998, July 16, 1998, *Billings Gazette*.	The Honorable Charles F. Tooley, Mayor, City of Billings, P.O. Box 1178, Billings, Montana 59103–1178.	June 9, 1998	300085
Nevada: Clark	Unincorporated Areas.	June 18, 1998, June 25, 1998, *Las Vegas Review-Journal*.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County, Board of Commissioners, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	May 20, 1998	320003
New Mexico:					
Bernalillo	City of Albuquerque.	July 24, 1998, July 31, 1998, *Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	June 18, 1998	350002
Bernalillo	Unincorporated Areas.	July 3, 1998, July 10, 1998, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernalillo County, Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	June 3, 1998	350001
Bernalillo	Unincorporated Areas.	July 24, 1998, July 31, 1998, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernalillo County, Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	June 18, 1998	350001
Oklahoma: Tulsa ...	City of Broken Arrow.	July 23, 1998, July 30, 1998, *Broken Arrow Ledger*.	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, Oklahoma 74013.	June 12, 1998	400236
Oregon: Washington.	City of Hillsboro ...	July 16, 1998, *July 23, 1998, Hillsboro Argus*.	The Honorable Gordon Faber, Mayor, City of Hillsboro, 123 West Main Street, Hillsboro, Oregon 97123–3999.	June 10, 1998	410243
Texas:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin	City of Allen	June 17, 1998 June 24, 1998, *The Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013.	May 13, 1998	480131
Travis	City of Austin	June 19, 1998, June 26, 1998, *Austin American-Statesman*.	The Honorable Kirk A. Watson, Mayor, City of Austin, 124 West Eighth Street, Austin, Texas 78701.	May 8, 1998	480624
Johnson	City of Burleson ...	July 8, 1998, July 15, 1998, *Burleson Star*.	The Honorable Rick Roper, Mayor, City of Burleson, 141 West Renfro, Burleson, Texas 76028.	October 13, 1998	485459
Williamson	City of Cedar Park	July 8, 1998, July 15, 1998, *Hill Country News*.	The Honorable Dorothy Duckett, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, Texas 78613.	June 11, 1998	481282
Collin	City of Dallas	July 17, 1998, July 24, 1998, *The Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, Texas 75201.	October 22, 1998	480171
Denton	Town of Flower Mound.	July 22, 1998, July 29, 1998, *Denton Record-Chronicle*.	The Honorable Larry W. Lipscomb, Mayor, Town of Flower Mound, 2121 Cross Timbers Drive, Flower Mound, Texas 75028.	June 9, 1998	480777
Fort Bend	Unincorporated Areas.	June 17, 1998, June 24, 1998, *Fort Bend Star*.	The Honorable Michael D. Rozell, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, Texas 77469.	May 8, 1998	480228
Tarrant	City of Fort Worth	June 12, 1998, June 19, 1998, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	May 6, 1998	480596
Webb	City of Laredo	July 2, 1998, July 9, 1998, *Laredo Morning News*.	The Honorable Saul N. Ramirez, Jr., Mayor, City of Laredo, P.O. Box 579, Laredo, Texas 78042–0579.	May 26, 1998	480651
Gregg and Harrison.	City of Longview Harrison.	June 19, 1998, June 26, 1998, *Longview News-Journal*.	The Honorable David McWhorter, Mayor, City of Longview, P.O. Box 1592, Longview, Texas 75606–1952.	May 7, 1998	480264
Collin	City of Plano	June 24, 1998, July 1, 1998, *Plano Star Courier*.	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	May 29, 1998	480140
Collin	City of Plano	July 22, 1998, July 29, 1998, *Plano Star Courier*.	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	June 22, 1998	480140
Fort Bend	City of Sugar, Land.	June 17, 1998, June 24, 1998, *Fort Bend Star*.	The Honorable Dean Hrbacek, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, Texas 77487–0110.	May 8, 1998	480234
Denton	City of The Colony	June 19, 1998, June 26, 1998, *The Leader*.	The Honorable Mary B. Watts, Mayor, City of The Colony, City Hall, 5151 North Colony Boulevard, The Colony, Texas 75056.	May 19, 1998	481581

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–23070 Filed 8–26–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has

resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Yavapai (FEMA Docket No. 7244).	Town of Cottonwood.	April 22, 1998, April 29, 1998, *The Verde Independent.*	The Honorable Ruben Jauregui, Mayor, Town of Cottonwood, 827 North Main Street, Cottonwood, Arizona 86326.	March 12, 1998	040096
Navajo (FEMA Docket No. 7244).	City of Holbrook ...	April 15, 1998, April 22, 1998, *Holbrook Tribune-News.*	The Honorable Claudia Maestas, Mayor, City of Holbrook, P.O. Box 70, Holbrook, Arizona 86025.	March 20, 1998	040067
Navajo (FEMA Docket No. 7244).	Unincorporated Areas.	April 15, 1998, April 22, 1998, *Holbrook Tribune-News.*	The Honorable Lewis Tenney, Chairperson, Navajo County Board of Supervisors, P.O. Box 668, Holbrook, Arizona 86025.	March 20, 1998	040066
Maricopa (FEMA Docket No. 7244).	City of Phoenix	February 20, 1998, February 27, 1998, *The Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003–1611.	February 3, 1998	040051
California:					
San Bernardino (FEMA Docket No. 7244).	City of Colton	February 19, 1998, February 26, 1998, *The Colton Courier.*	The Honorable Karl E. Gayton, Mayor, City of Colton, 650 North La Cadena Drive, Colton, California 92324.	January 21, 1998	060273
Orange (FEMA Docket No. 7244).	City of Fullerton ...	April 16, 1998, April 23, 1998, *Fullerton News-Tribune.*	The Honorable Don Bankhead, Mayor, City of Fullerton, 303 West Commonwealth Avenue, Fullerton, California 92832.	March 13, 1998	060219
San Bernardino (FEMA Docket No. 7244).	City of San Bernardino.	February 19, 1998, February 26, 1998 *The Sun.*	The Honorable Tom Minor, Mayor, City of San Bernardino, 300 North D Street, San Bernardino, California 92418.	January 21, 1998	060281

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Sacramento (FEMA Docket No. 7244).	Unincorporated Areas.	February 20, 1998, February 27, 1998 *Sacramento Bee*.	The Honorable Illa Collin, Chairperson, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	January 28, 1998	060262
Colorado:					
Arapahoe (FEMA Docket No. 7244).	Unincorporated Areas.	March 12, 1998, March 19, 1998, *Littleton Independent*.	The Honorable Polly Page, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	February 18, 1998	080011
Arapahoe (FEMA Docket No. 7244).	Town of Columbine Valley.	March 12, 1998, March 19, 1998, *Littleton Independent*.	The Honorable Michael J. Tanner, Mayor, Town of Columbine Valley, 5931 South Middlefield Road, Suite 101, Littleton, Colorado 80123.	February 18, 1998	080014
Arapahoe (FEMA Docket No. 7244).	Town of Columbine Valley.	March 19, 1998, March 26, 1998, *Littleton Independent*.	The Honorable Michael Tanner, Mayor, Town of Columbine Valley, 5931 South Middlefield Road, Suite 101, Columbine Valley, Colorado 80123.	March 6, 1998	080014
Douglas (FEMA Docket No. 7244).	Unincorporated Areas.	February 18, 1998, February 25, 1998, *Douglas County News Press*.	The Honorable M. Michael Cooke, Chairman, Douglas County Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	February 6, 1998	080049
Jefferson (FEMA Docket No. 7244).	City of Golden	April 17, 1998, April 24, 1998, *Golden Transcript*.	The Honorable Jan Schenck, Mayor, City of Golden, 944 Tenth Street, Golden, Colorado 80401.	March 24, 1998	080090
Jefferson (FEMA Docket No. 7244).	Unincorporated Areas.	April 15, 1998, April 22, 1998, *Columbine Community Courier*.	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	March 20, 1998	080087
Jefferson (FEMA Docket No. 7244).	Unincorporated Areas.	April 17, 1998, April 24, 1998 *Golden Transcript*.	The Honorable Michelle Lawrence, Chairperson, Jeffeson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	March 24, 1998	080087
Arapahoe (FEMA Docket No. 7244).	City of Littleton	March 12, 1998, March 19, 1998, *Littleton Independent*.	The Honorable Pat Cronenberger, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	February 18, 1998	080017
Arapahoe (FEMA Docket No. 7244).	City of Littleton	March 19, 1998, March 26, 1998, *Littleton Independent*.	The Honorable Pat Cronenberger, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	March 6, 1998	080017
Iowa: Polk (FEMA Docket No. 7244).	City of Grimes	March 5, 1998, March 12, 1998, *Northeast Dallas County Record*.	The Honorable Brad Long, Mayor, City of Grimes, P.O. Box 460, Grimes, Iowa 50111.	February 6, 1998	190228
Kansas:					
Sedgwick (FEMA Docket No. 7228).	Unincorporated Areas.	July 22, 1997, July 29, 1997, *The Wichita Eagle*.	The Honorable Thomas G. Winters, Chairman, Board of Commissioners, Sedgwick County, 525 North Main Street, Suite 320, Wichita, Kansas 67203.	June 26, 1997	200321
Sedgwick (FEMA Docket No. 7228).	City of Wichita	July 22, 1997, July 29, 1997, *The Wichita Eagle*.	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	June 26, 1997	200328
Sedgwick (FEMA Docket No. 7244).	City of Wichita	March 13, 1998, March 20, 1998, *The Wichita Eagle*.	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	February 19, 1998	200328
Sedgwick (FEMA Docket No. 7244).	City of Wichita	April 23, 1998, April 30, 1998, *The Wichita Eagle*.	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Maine Street, Wichita, Kansas 67202.	March 18, 1998	200328
Louisiana: St. Landry Parish (FEMA Docket No. 7248).	Town of Krotz Springs.	May 5, 1998, May 12, 1998, *The Daily World*.	The Honorable Gary Soileau, Mayor, Town of Krotz Springs, P.O. Box 218, Krotz Springs, Louisiana 70750.	April 22, 1998	220170

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nebraska: Lancaster (FEMA Docket No. 7244).	City of Lincoln	March 12, 1998, March 19, 1998, *Lincoln Journal Star*.	The Honorable Mike Johanns, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, Nebraska 68508.	February 17, 1998	315273
New Mexico:					
Bernalillo (FEMA Docket No. 7244).	City of Albuquerque.	February 6, 1998, February 13, 1998, *Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	January 26, 1998	350002
Eddy (FEMA Docket No. 7244).	City of Artesia	February 3, 1998, February 10, 1998, *Artesia Daily Press*.	The Honorable Ernest Thompson, Mayor, City of Artesia, P.O. Box 1310, Artesia, New Mexico 88211–1310.	January 12, 1998	350016
Bernalillo (FEMA Docket No. 7244).	Unincorporated Areas.	February 6, 1998, February 13, 1998, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernaillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	Janaury 26, 1998	350001
Bernalillo (FEMA Docket No. 7244).	Unincorporated Areas.	March 18, 1998, March 25, 1998, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernaillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	February 27, 1998	350001
Eddy (FEMA Docket No. 7244).	City of Carlsbad ...	March 13, 1998, March 20, 1998, *Current Argus*.	The Honorable Gary L. Perkowski, Mayor, City of Carlsbad, P.O. Box 1569, Carlsbad, New Mexico 88221–1569.	February 20, 1998	350017
Eddy (FEMA Docket No. 7244).	Unincorporated Areas.	March 13, 1998, March 20, 1998 *Current Argus*.	The Honorable Stephen Massey, County Manager, Eddy County, P.O. Box 1139, Carlsbad, New Mexico 88221–1139.	February 20, 1998	350120
Nevada: Douglas (FEMA Docket No. 7236).	Unincorporated Areas.	December 3, 1997, December 10, 1997, *The Record Courier*.	The Honorable Jacques Etchegoyhen, Chairman, Douglas County Board of Commissioners, P.O. Box 218, Minden, Nevada 89423.	November 6, 1997	320008
Oklahoma:					
Garfield (FEMA Docket No. 7244).	City of Enid	April 16, 1998, April 23, 1998, *Enid News and Eagle*.	The Honorable Mike Cooper, Mayor, City of Enid, P.O. Box 1768, Enid, Oklahoma 73702.	March 13, 1998	400062
Cleveland (FEMA Docket No. 7244).	City of Norman	March 3, 1998, March 10, 1998 *Norman Transcript*.	The Honorable Bill Nations, Mayor, City of Norman, P.O. Box 370, Norman, Oklahoma 73070–0370.	February 13, 1998	400046
Garfield (FEMA Docket No. 7244).	Town of North Enid.	April 16, 1998, April 23, 1998, *Enid News and Eagle*.	The Honorable Chris Scott, Mayor, Town of North Enid, 220 Redwood North Enid, Oklahoma 73701.	March 13, 1998	400425
Tulsa (FEMA Docket No. 7244).	City of Tulsa	April 16, 1998, April 23, 1998, *Tulsa World*.	The Honorable M. Susan Savage, Mayor, City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.	March 16, 1998	405381
Oregon:					
Jackson (FEMA Docket No. 7244).	Unincorporated Areas.	March 12, 1998, March 19, 1998, *Medford Mail-Tribune*.	The Honorable Sue Kupillas, Chairperson, Jackson County Board of Commissioners, 10 South Oakdale, Room 200, Medford, Oregon 97501.	June 17, 1998	415589
Jackson (FEMA Docket No. 7244).	City of Medford	March 12, 1998, March 19, 1998, *Medford Mail-Tribune*.	The Honorable Jerry Lausmann, Mayor, City of Medford, 411 West Eighth Street, Medford, Oregon 97501.	June 17, 1998	410096
Clackamas (FEMA Docket No. 7244).	City of West Linn	April 16, 1998, April 23, 1998, *West Linn Tidings*.	The Honorable Jill Thorn, Mayor, City of West Linn, P.O. Box 48, West Linn, Oregon 97068–0048.	March 24, 1998	410024
Texas:					
Collin (FEMA Docket No. 7244).	City of Allen	February 4, 1998, February 11, 1998, *Plano Star Courier*.	The Honorable Kevin Lilly, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013.	January 9, 1998 ...	480131
Collin (FEMA Docket No. 7248).	City of Allen	April 22, 1998, April 29, 1998, *The Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013.	March 30, 1998	480131
Potter and Randall (FEMA Docket No. 7244).	City of Amarillo	February 19, 1998, February 26, 1998, *Amarillo Daily News*.	The Honorable Kel Seliger, Mayor, City of Amarillo, P.O. Box 1971, Amarillo, Texas 79150.	January 30, 1998	480529

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Williamson (FEMA Docket No. 7244).	City of Cedar Park	March 18, 1998, March 25, 1998, *Hill Country News*.	The Honorable Dorothy Duckett, Mayor, City of Cedar Park, City Hall, 600 North Bell Boulevard, Cedar Park, Texas 78613.	March 5, 1998	481282
Bexar, Comal, and Guadalupe (FEMA Docket No. 7244).	City of Cibolo	March 12, 1998, March 19, 1998, *The Herald*.	The Honorable Sam Bauder, Mayor, City of Cibolo, P.O. Box 88, Cibolo, Texas 78108.	February 11, 1998	480267
Collin, Dallas, Denton, Kaufman, and Rockwall (FEMA Docket No. 7244).	City of Dallas	February 3, 1998, February 10, 1998, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, Texas 75201.	January 20, 1998	480171
Dallas (FEMA Docket No. 7244).	City of Dallas	April 1, 1998, April 8, 1998, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, Texas 75201.	July 7, 1998	480171
El Paso (FEMA Docket No. 7244).	City of El Paso	February 3, 1998, February 10, 1998, *El Paso Times*.	The Honorable Carlos M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	January 16, 1998	480214
El Paso (FEMA Docket No. 7244).	City of El Paso	April 23, 1998, April 30, 1998, *El Paso Times*.	The Honorable Carlos M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	March 23, 1998	480214
Dallas (FEMA Docket No. 7244).	City of Farmers Branch.	April 3, 1998, April 10, 1998, *Metro Crest News*.	The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010.	July 9, 1998	480174
Tarrant (FEMA Docket No. 7244).	City of Fort Worth	February 5, 1998, February 12, 1998, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	January 20, 1998	480596
Tarrant (FEMA Docket No. 7244).	City of Fort Worth	April 17, 1998, April 24, 1998, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	March 12, 1998	480596
Dallas (FEMA Docket No. 7244).	City of Grand Prairie.	March 19, 1998, March 26, 1998, *Grand Prairie News*.	The Honorable Charles England, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	February 25, 1998	485472
Harris (FEMA Docket No. 7244).	Unincorporated Areas.	February 18, 1998, February 25, 1998, *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	May 4, 1998	480287
Tarrant (FEMA Docket No. 7244).	City of Hurst	April 21, 1998, April 28, 1998, *Dallas Morning News*.	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	March 24, 1998	480601
Dallas (FEMA Docket No. 7248).	City of Mesquite ...	April 28, 1998, May 5, 1998, *Dallas Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	March 30, 1998	485490
Collin (FEMA Docket No. 7244).	City of Plano	February 4, 1998, February 11, 1998, *Plano Star Courier*.	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	January 9, 1998 ...	480140
Collin (FEMA Docket No. 7244).	City of Plano	April 22, 1998, April 29, 1998, *Plano Star Courier*.	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	March 19, 1998	480140
Bexar, Comal, and Guadalupe (FEMA Docket No. 7244).	City of Schertz	March 12, 1998, March 19, 1998, *The Herald*.	The Honorable Hal Baldwin, Mayor, City of Schertz, P.O. Drawer I, Schertz, Texas 78154.	February 11, 1998	480269
Washington:					
Pierce (FEMA Docket No. 7244).	City of Orting	March 17, 1998, March 24, 1998, *Pierce County Herald*.	The Honorable Guy S. Colorossi, Mayor, City of Orting, P.O. Box 489, Orting, Washington 98360–0489.	February 26, 1998	530143

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Columbia (FEMA Docket No. 7244).	Unincorporated Areas.	March 4, 1998, March 11, 1998, *Dayton Chronicle*.	The Honorable Charles G. Reeves, Chairman, Columbia County Board of Commissioners, 341 East Main, Dayton, Washington 99328.	June 9, 1998	530029

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–23069 Filed 8–26–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Quartzsite (Town), La Paz County (FEMA Docket No. 7246)	
Tyson Wash:	
Approximately 2,500 feet downstream of Tyson Drive	*816
Approximately 1,100 feet upstream of Tyson Drive	*836
Plymouth Wash:	
Approximately 500 feet upstream of confluence with Tyson Wash	*830
Just downstream of Plymouth Road	*877
Plomosa Wash:	
Approximately 750 feet upstream of confluence with Tyson Wash	*852
Approximately 1,500 feet upstream of Plymouth Road ..	*901
La Cholla Wash—Main Branch:	
At confluence with Tyson Wash	*840
Approximately 5,900 feet upstream of Kofa Road	*917
La Cholla Wash—North Branch:	
Approximately 1,200 feet downstream of Tyson Drive	*823

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,000 feet upstream of Kofa Road ..	*870
Maps are available for inspection at the Town of Quartzsite Office of Planning and Zoning, Town Hall, 465 North Plymouth, Quartzsite, Arizona.	
CALIFORNIA	
Burbank (City), Los Angeles County (FEMA Docket No. 7246)	
Lockheed Drain Channel:	
At confluence with Burbank Western Flood Control Channel	*578
Approximately 1.1 miles upstream of access road	*711
Lake Street Overflow:	
Approximately 410 feet downstream of Chestnut Street	*576
Approximately 310 feet upstream of Chestnut Street	*577
North Overflow:	
At confluence with Lockheed Drain Channel	*592
At divergence from Lockheed Drain Channel	*641
Flow Along Empire Avenue:	
Approximately 140 feet downstream of Hollywood Way	*669
Approximately 0.4 mile upstream of Hollywood Way	*691
Maps are available for inspection at the City of Burbank Department of Public Works, 275 East Olive Avenue, Burbank, California.	
Morgan Hill (City), Santa Clara County (FEMA Docket No. 7226)	
Madrone Channel:	
Approximately 300 feet downstream of East Dunne Avenue	*353
Just downstream of Cochran Road	*378
Tennant Creek:	
Approximately 0.5 mile downstream of Fountain Oaks Drive	*347
Approximately 0.25 mile upstream of Fountain Oaks Drive	*361
Watsonville Road Overflow:	
At convergence with Llagas Creek	*303
West of El Camino Real and 400 feet south of Watsonville Road	*319
West Little Llagas Creek:	
Approximately 3,000 feet downstream of Monterey Highway	*316
Just upstream of Watsonville Road	*321
Along Del Monte Avenue, 1,000 feet north of Wright Avenue	*352
Approximately 1,800 feet upstream of Llagas Road	*384
Maps are available for inspection at the City of Morgan Hill Public Works Department, 100 Edes Court, Morgan Hill, California.	
Santa Clara (City), Santa Clara County (FEMA Docket No. 7246)	
San Tomas Aquino Creek:	
Just upstream of Old Mountain View Alviso Road	*11
Approximately 300 feet upstream of Monroe Street ...	*53
Maps are available for inspection at the City of Santa Clara Department of Public Works, 1500 Warburton Avenue, Santa Clara, California.	
KANSAS	
Perry (City), Jefferson County (FEMA Docket No. 7250)	
Kansas River:	
Approximately 1 mile southeast of Cedar Street at the southeasternmost corporate limit	+846
Approximately 200 feet south of Bridge Street	+850
Delaware River:	
At Union Pacific Railroad crossing over Delaware River	+850
Maps are available for inspection at the City of Perry City Hall, 119 Elm Street, Perry, Kansas.	
Note: To convert from NGVD to NAVD, add 0.26 foot.	
LOUISIANA	
Lafayette Parish (and Incorporated Areas) (FEMA Docket No. 7246)	
Bayou Queue de Tortue:	
Approximately 2,400 feet downstream of State Route 719, at confluence of South Branch	*27
Just upstream of State Route 343	*32
Duson Branch:	
Approximately 1,420 feet downstream of U.S. Route 90	*31
Approximately 70 feet upstream of Anderson Road	*33
North Branch:	
Approximately 1,300 feet downstream of U.S. Route 90	*29
Approximately 600 feet upstream of State Route 1096	*31
South Branch:	
At confluence with Bayou Queue de Tortue	*28
At divergence from Bayou Queue de Tortue	*31
Maps are available for inspection at 806 First Street, Duson, Louisiana.	
Maps are available for inspection at 707 West University Avenue, Lafayette, Louisiana.	
Natchez (Village), Natchitoches Parish (FEMA Docket No. 7246)	
Bayou Natchez:	
Approximately 4/5 mile downstream of Main Street near corporate limits	*106
Approximately 9/10 mile upstream of Main Street near corporate limits	*106
Maps are available for inspection at 181 Main Street, Natchez, Louisiana.	
Natchitoches Parish (Unincorporated Areas) (FEMA Docket No. 7246)	
Cane River-Old River-Bayou Natchez:	
Cane River-Red Bayou Diversion Canal at Parish boundary, approximately 1 mile downstream of confluence with Cane River	*99
Cane River approximately 1.5 miles upstream of State Route 119	*104
Old River at City of Natchitoches southwest corporate limits, just downstream of State Route 1	*110
Bayou Bonna Vista:	
At confluence with Winn Creek	*154
At Natchitoches Parish corporate limits, approximately 2.2 miles upstream of confluence with Winn Creek ...	*163
Cox Branch:	
At confluence with Bayou DuPont	*141
At Natchitoches Parish corporate limits, approximately 2 miles upstream of Louisiana Highway 120	*162
Bayou DuPont:	
At confluence with Little River	*129
At Louisiana Highway 120	*145
Winn Creek:	
At confluence with Bayou DuPont	*136
At Parish Route 349	*195
Maps are available for inspection at 203 St. Denis, Room 116, Natchitoches, Louisiana.	
Richland Parish (Unincorporated Areas) (FEMA Docket No. 7246)	
Bayou Macon:	
Approximately 4 miles downstream of Interstate 20	*75
Approximately 5.4 miles upstream of U.S. 80	*79

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at Courthouse Square, Richland Parish, Louisiana.	
NEVADA	
Fallon (City), Churchill County (FEMA Docket No. 7246)	
New River Drain:	
At Harrigan Road	*3,956
Approximately 75 feet upstream of Taylor Place	*3,967
Maps are available for inspection at the City of Fallon City Hall, Building Inspector's Office, 55 West Williams Avenue, Fallon, Nevada.	
Churchill County (Unincorporated Areas) (FEMA Docket No. 7246)	
New River Drain:	
Just upstream of Harrigan Road	*3,956
At divergence from Carson River	*3,974
Maps are available for inspection at the Churchill County Planning Department, 180 West First Street, Fallon, Nevada.	
OKLAHOMA	
Cleveland County (and Incorporated Areas) (FEMA Docket No. 7246)	
Chouteau Creek (North of Lexington):	
Just downstream of Bryant Road	*1,071
Just upstream of Bryant Road	*1,073
Just upstream of Cemetery Road	*1,124
Dripping Springs Creek:	
Just downstream of Cemetery Road	*1,107
At confluence with Chouteau Creek	*1,085
Maps are available for inspection at 201 South Jones, Norman, Oklahoma.	
Maps are available for inspection at 12031 Slaughterville Road, Lexington, Oklahoma.	
TEXAS	
Luling (City), Caldwell County (FEMA Docket No. 7246)	
San Marcos River:	
At the southernmost corporate limits of the City of Luling	*360
Approximately 4,000 feet upstream of U.S. Highway 80	*363
Maps are available for inspection at the City of Luling City Secretary's Office, City Hall, 509 East Crockett, Luling, Texas.	
Martindale (Town), Caldwell County (FEMA Docket No. 7246)	
San Marcos River:	
Approximately 400 feet downstream of FM 1979 at the southeastern corporate limits	*515
Approximately 0.5 mile upstream of access road	*538
Martindale Diversion:	
Approximately 0.5 mile downstream of FM 1979 at the southern corporate limits	*512
Just downstream of FM 1979 at the divergence from San Marcos River	*522
Maps are available for inspection at the Town of Martindale Town Hall, 409 Main Street, Martindale, Texas.	
Bastrop County (and Incorporated Areas) (FEMA Docket No. 7246)	
Cedar Creek:	
Approximately 5,600 feet downstream of FM 535	*411
Approximately 200 feet downstream of Watts Lane	*432
Just downstream of FM 812	*451
Maps are available for inspection at the County Courthouse, 804 Pecan Street, Bastrop, Texas.	
Caldwell County (Unincorporated Areas) (FEMA Docket No. 7246)	
San Marcos River:	
At confluence of Plum Creek	*341
Just upstream of U.S. Highway 10	*355
Just upstream of U.S. Highway 90	*379
Just upstream of State Highway 671	*409
Just upstream of State Highway 20	*442
Just upstream of FM 1977	*485
Just upstream of County Road 21	*564
Bypass Creek:	
At confluence with San Marcos River	*553
Approximately 150 feet upstream of Camp Gary access road	*577
Martindale Diversion:	
Approximately 2.8 miles downstream of FM 1979 at the convergence with San Marcos River	*500
Just downstream of FM 1979 at the divergence from San Marcos River	*522
Brushy Creek:	
Approximately 1 mile downstream of Highway 21	*539
Just upstream of Highway 21 at the northwest county boundary	*542
Maps are available for inspection at the Caldwell County Courthouse, Main and San Antonio Streets, Lockhart, Texas.	
Ellis County (and Incorporated Areas) (FEMA Docket No. 7218)	
Chambers Creek:	
Just downstream of Interstate 35E	*476
At confluence of North and South Fork Chambers Creek	*505
North Fork Chambers Creek:	
At confluence with South Fork Chambers Creek	*505
Approximately 1,000 feet upstream of Auburn Road	*557
Greathouse Branch:	
At confluence with Chambers Creek	*504
Approximately 3,700 feet upstream of FM 66 (Maypearl Road)	*676
Grove Creek:	
At confluence with Red Oak Creek	*369
Just upstream of Boyce Road	*466
Approximately 4,700 feet downstream of U.S. Route 77	*586
Waxahachie Creek:	
Approximately 1,300 feet upstream of Interstate 35E	*559
Just upstream of the Southern Pacific Railroad	*564
Approximately 500 feet upstream of FM 1387	*707
Little Creek:	
Approximately 0.75 mile downstream of Cockrell Hill Road	*637
Approximately 2,200 feet downstream of Cockrell Hill Road	*646
Maps are available for inspection at the Ellis County Courthouse, Waxahachie, Texas.	
Maps are available for inspection at the City of Maypearl City Hall, Maypearl, Texas.	
Maps are available for inspection at the City of Midlothian City Hall, 104 West Avenue E, Midlothian, Texas..	
Maps are available for inspection at the City of Palmer City Hall, Palmer, Texas..	
Maps are available for inspection at the City of Ovilla City Hall, Ovilla, Texas..	
Maps are available for inspection at the City of Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas..	

Source of flooding and location	#Depth in feet above ground. * Elevation in feet (NGVD)
WASHINGTON	
Mason County (Unincorporated Areas) (FEMA Docket No. 7246)	
Skokomish River:	
Just upstream of State Route 106	*17
Approximately 2,000 feet downstream of confluence of North and South Fork Skokomish Rivers	*52
Maps are available for inspection at the Mason County Department of Community Development, 411 North Fifth Street, Shelton, Washington.	
Okanogan County (Unincorporated Areas) (FEMA Docket No. 7246)	
Early Winters Creek:	
Approximately 0.5 mile downstream of State Highway 20	#5
Approximately 0.5 mile upstream of State Highway 20	#5
Maps are available for inspection at the Okanogan County Planning and Development Office, 237 Fourth Avenue, Okanogan, Washington.	
WYOMING	
Ranchester (Town), Sheridan County (FEMA Docket No. 7246)	
Tongue River:	
At the southeastern corner of the corporate limit	*3,742
Just upstream of Wolf Creek County Road	*3,761
Approximately 300 feet west of the intersection of Fourth Avenue West and Rawlings Drive, along Rawlings Drive	*3,767
Five Mile Creek:	
Approximately 1,200 feet downstream of U.S. Route 14	*3,763
Just upstream of U.S. Route 14	*3,773
Just upstream of an unnamed road in the northwestern corner of Town	*3,785
Maps are available for inspection at the Town Clerk's Office, 145 Coffeen Street, Ranchester, Wyoming.	
Thermopolis (Town), Hot Springs County (FEMA Docket No. 7246)	
Big Horn River:	
At the northeasternmost corporate limit, approximately 4,900 feet downstream of State Park Street	*4,302
At the southernmost corporate limit, approximately 4,400 feet upstream of Eighth Street	*4,332
Maps are available for inspection at the Town of Thermopolis Town Hall, 420 Broadway, Thermopolis, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–23067 Filed 8–26–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–36; DA 98–1553]

Assessment and Collection of Regulatory Fees for Fiscal Year 1998

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects portions of the Commission's rules that were published in the **Federal Register** of August 11, 1998 (63 FR 42734).

EFFECTIVE DATE: August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director, (202) 418–0445 or Martha Contee, Public Service Division, (202) 418–0192.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document establishing fee collection dates in the **Federal Register** of August 11, 1998 (63 FR 42734). In rule FR Doc. 98–21259, published on August 11, 1998, (63 FR 42734) make the following correction:

1. On page 42735, in the first column, the dates are corrected to read as follows:

Adopted: August 20, 1998.

Released: August 21, 1998.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–248; RM No. 9097; FCC 98–189]

Development of Competition and Diversity in Video Programming Distribution and Carriage

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Section 628 of the Communications Act prohibits unfair or discriminatory practices in the sale of satellite cable and satellite broadcast programming. Section 628 is intended to increase competition and diversity in the multichannel video programming market, as well as to foster the development of competition to traditional cable systems, by prescribing regulations that govern the access by competing multichannel systems to cable programming services.

DATES: This rule contains information collection requirements that have not been approved by the Office of Management and Budget (''OMB''). The Commission will publish a document in the **Federal Register** announcing the effective date of this rule. Written comments by the public on the modified information collection requirements contained should be submitted on or before October 26, 1998. If you anticipate that you will be submitting comments on the modified information collection requirements, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: A copy of any comments on the modified information collection requirements contained herein should be submitted to Judy Boley, Federal Communications, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the Report and Order contact Steve Broeckaert at (202) 418–7200 or via internet at sbroecka@fcc.gov. For additional information concerning the proposed and/or modified information collection requirements contained in the Report and Order contact Judy Boley at (202) 418–0214 or via internet at jboley@fcc.gov.

Paperwork Reduction Act

The requirements contained in this Report and Order have been analyzed

with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and would impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the proposed information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due October 26, 1998 and then implementation of any modified requirements will be subject to approval by the Office of Management and Budget (''OMB'') as prescribed by the 1995 Act. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX.

Title: Section 76.1003 Adjudicatory proceedings.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 24.

Estimated Time Per Response: 4–30 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 408 hours.

Total Annual Cost to Respondents: $54,360.

Needs and Uses: The information disclosed and collected in these proceedings has been used by Commission staff to resolve disputes alleging unfair methods of competition and deceptive practices where the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

Synopsis

1. The *Report and Order* addresses the issues raised in the *Memorandum Opinion and Order and Notice of Proposed Rulemaking* in CS Docket No. 97–248, 63 FR 1943 (December 18, 1997) (''*NPRM*''), regarding proposed amendments to the rules promulgated pursuant to section 628 of the Communications Act (47 USC § 548).

2. Sanctions. The Commission's existing statutory forfeiture authority can be used in appropriate circumstances as an enforcement mechanism for program access violations. Restitution in the form of damages is also an appropriate remedy to return improper gains obtained by vertically-integrated programmers to unjustly injured MVPDs. However, the law of program access continues to be refined, and it is not appropriate in all instances to impose damages for program access violations. Section 628 permits the Commission to exercise discretion in this area. Where a program access defendant relies upon a good faith interpretation of an ambiguous aspect of the program access provisions for which there is no guidance, we do not believe it would promote competition, or otherwise benefit the video marketplace, to require damages from a programming provider in such circumstances. Where a program access defendant knew, or should have known, that it was engaging in conduct violative of section 628, damages are appropriate and will be imposed. The Commission has the authority to assess forfeitures and damages separately and in combination depending upon the circumstances of a given case. The Commission also retains the authority to issue entirely prospective relief as it has in previous decisions.

3. Damages can best be calculated on a case-by-case basis using procedures similar to those employed by the Commission in adjudicating common carrier formal complaints. The most efficient method by which to administer damages is to provide the Commission with discretion to bifurcate the violation determination from any damages adjudication. The *Report and Order* requires that a complainant seeking damages for a program access violation must file as part of its complaint either:

(a) A detailed computation of damages, including supporting documentation and materials; or

(b) An explanation of:

(i) What information not in the possession of the complaining party is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists; and

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

Where a violation is found, the Cable Services Bureau (''Bureau'') will indicate in its order whether the violation is the type for which the Commission will impose damages or forfeitures. The burden of proof regarding damages rests with the complainant, who must demonstrate with specificity the damages arising from the program access violation.

4. The Commission may adjudicate damages by determining the sufficiency of the damages calculation or computation methodology submitted by the complainant. Where the Commission issues a written order approving or modifying a damages calculation, the defendant shall recompense the complainant as directed in the Commission's order. Where the Commission issues a written order approving or modifying a damages computation methodology, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated methodology. To ensure that the parties are diligent in their negotiations to apply the approved methodology, the Commission will require that, within thirty days of the date the damages computation method is approved and released, the parties must file with the Commission a joint statement which will do one of the following: (1) detail the parties' agreement as to the amount of damages; (2) state that the parties are continuing to negotiate in good faith and request that the parties be given an extension of time to continue such negotiations, or (3) detail the bases for the continuing dispute and the reasons why no agreement can be reached. In cases in which the parties cannot resolve the amount of damages within a reasonable time period, the Commission retains the right to determine the actual amount of damages on its own, or through referral to an ALJ.

5. Time Limits. Denial of programming cases (unreasonable refusal to sell, petitions for exclusivity, and exclusivity complaints) should be resolved within five months of the submission of the complaint to the Commission. All other program access complaints, including price discrimination cases, should be resolved within nine months of the submission of the complaint to the Commission. Where the Commission bifurcates the program access violation determination from a damages determination, the time limits adopted by the Commission apply solely to the resolution of the program access violation. The time limits contemplate resolution times applicable to most typical program access disputes

which do not involve complex or repeated discovery, pleading extensions or extra pleadings based upon new information, or requests that the Commission stay proceedings pending settlement negotiations. Where the parties to a program access dispute submit a motion to stay proceedings pending settlement discussions, the Commission will afford the parties the time necessary to determine whether a negotiated settlement is possible. If parties choose to pursue negotiations time limits will be suspended. Program access defendants must file an answer within 20 days of service of the complaint, unless otherwise directed by the Commission. Program access complainants must file a reply within 15 days of service of the answer, unless otherwise directed by the Commission.

6. Discovery. The Commission retains the current system of Commission-controlled discovery. Discovery as-of-right, or expanded discovery, will not improve the quality or efficiency of the Commission's resolution of program access complaints. The Commission clarifies its rules to provide that, to the extent that a defendant expressly references and relies upon a document or documents within its control in responding to a program access complaint, the defendant must attach that document or documents to its answer. The Commission adopts the standardized protective order that was attached to the *NPRM* for program access matters with several minor revisions.

7. Terrestrial Delivery of Programming. The Commission concludes that the record developed in this proceeding fails to establish that the conduct complained of, *i.e.*, moving the transmission of programming from satellite to terrestrial delivery to avoid the program access rules, is significant and causing demonstrative competitive harm at this time. In circumstances where anti-competitive harm has not been demonstrated, the Commission perceives no reason to impose detailed rules on the movement of programming from satellite delivery to terrestrial delivery that would unnecessarily inject the Commission into the day-to-day business decisions of vertically-integrated programmers. While the record does not indicate a significant anti-competitive impact necessitating Commission action at this time, the Commission believes that the issue of terrestrial distribution of programming could eventually have substantial impact on the ability of alternative MVPDs to compete in the video marketplace. The Commission will continue to monitor this issue and its impact on competition in the video marketplace.

8. Buying Groups: Joint and Several Liability. The record justifies adopting an alternative method to joint and several liability that buying groups can satisfy which ensures that programming distributors are adequately protected from excessive financial risk. To qualify for the alternative to joint and several liability, buying groups must maintain liquid cash or credit reserves (*i.e.*, cash, cash equivalents, or letters or lines of credit) equal to cover the cost of one month's programming for all of the buying groups members. In addition, each member of the buying group will remain liable to the programmer for its pro-rata share of the buying group's programming. Under this approach, the alternative financial assurances method is available to buying groups of all sizes. At the same time, programming providers are adequately protected from the catastrophic default by multiple members of a buying group. If multiple members of a particular buying group default on their obligations to the buying group, and the buying group is unable to meet its obligations with existing resources, the programming provider is ensured payment for all programming thus far provided. At such point, the programming provider would have the option of terminating its contract with the buying group, retaining the one month's programming fees, and contracting with buying group members on terms negotiated between the programmers and the individual MVPDs. Alternatively, the programming provider could retain only the portion of the one month's programming fees that were actually defaulted upon, continue providing programming to the buying group, and look to the individual member for the balance of its pro-rata share of the buying groups' contractual obligations.

Final Regulatory Flexibility Analysis

9. Background. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the Notice of Proposed Rule Making (''NPRM'') in this proceeding. The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order (''Order'') conforms to the RFA.

1. Need for Action and Objectives of the Rules. Section 628 of the Communications Act prohibits unfair or discriminatory practices in the sale of satellite cable and satellite broadcast programming and is intended to increase competition and diversity in the multichannel video programming market, as well as to foster the development of competition to traditional cable systems, by prescribing regulations that govern the access by competing multichannel systems to cable programming services. Pursuant to Congress' mandate in the 1992 Cable Act, the Commission promulgated regulations implementing the Communication Act's program access provisions. In 1997, Ameritech New Media, Inc. filed a petition for rulemaking requesting that the Commission amend our program access rules. The Commission issued a NPRM seeking comment on amendments to our program access rules. After reviewing the comments filed in this proceeding, we conclude that the public interest in increased competition and diversity in the multichannel video programming and the development of competition to traditional cable systems is further enhanced by amending our program access rules as described in the Order.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA. No comments were filed specifically in response to the IRFA. We have, however, considered the economic impact on small entities through consideration of comments that pertain to issues of concern to MVPDs and programming producers and distributors. In particular, the Small Cable Business Association (''SCBA'') filed comments addressing a number of issues. One of the rule changes adopted in the Order is intended to assist program buying cooperatives, many members of which are small entities, in gaining access to vertically-integrated cable programming at competitive rates.

3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the SBA. The rules we adopt in this Report and Order will

affect cable systems, multipoint multichannel distribution systems, direct broadcast satellites, home satellite dish manufacturers, satellite master antenna television, open video systems, local multipoint distribution systems, and program producers and distributors. Below, we set forth the general SBA and FCC cable small size standards, and then address each service individually to provide a more precise estimate of small entities. We also describe program producers and distributors.

4. *SBA Definitions for Cable and Other Pay Television Services:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were approximately 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue.

5. *Additional Cable System Definitions:* In addition, the Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving no more than 400,000 subscribers nationwide. Based on recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules we are adopting. We conclude that only a small percentage of these entities currently provide qualifying ''telecommunications services'' as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

6. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 cable subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

7. *Multipoint Multichannel Distribution Systems (''MMDS'')*: The Commission refined its definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

8. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We conclude that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

9. *ITFS:* There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. No commenters address these non-educational licensees. Accordingly, we conclude that there may be as many as 2032 licensees that are small businesses.

10. *Direct Broadcast Satellite (''DBS'')*: Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be affected by these proposed rules. Although DBS service requires a great investment of capital for operation, in the NPRM, we acknowledged that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Since the publication of the NPRM, however, more information has become available. In light of the 1997 gross revenue figures for the various DBS operators, we conclude that no DBS operator qualifies as a small entity.

11. *Home Satellite Dish (''HSD''):* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

12. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,184,470 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator (''MSO'').

13. *Satellite Master Antenna Television (''SMATVs''):* Industry

sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.162 million residential subscribers as of June 30, 1997. The ten largest SMATV operators together pass 848,450 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we conclude that a substantial number of SMATV operators qualify as small entities.

14. *Local Multipoint Distribution System (''LMDS''):* Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA approved definition for cable and other pay services that qualify as a small business is defined in paragraphs 5–6, *supra.* A small radiotelephone entity is one with 1500 employees or fewer. However, for the purposes of this *Report and Order* on navigation devices, we include only an estimate of LMDS video service providers.

15. An auction for licenses to operate LMDS systems was recently completed by the Commission. The vast majority of the LMDS license auction winners were small businesses under the SBA's definition of cable and pay television (SIC 4841). In the Second R&O, we adopted a small business definition for entities bidding for LMDS licenses as an entity that, together with affiliates and controlling principles, has average gross revenues not exceeding $40 million for each of the three preceding years. We have not yet received approval by the SBA for this definition.

16. There is only one company, CellularVision, that is currently providing LMDS video services. In the IRFA, we assumed that CellularVision was a small business under both the SBA definition and our auction rules. No commenters addressed the tentative conclusions we reached in the NPRM. Accordingly, we affirm our tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

17. *Open Video System (''OVS''):* The Commission has certified 15 OVS operators. Of these nine, only two are providing service. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone (''VDT'') system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

18. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, we will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and 7822, and $5 million or less in annual receipts for SIC 7922. The 1992 Bureau of the Census data indicate the following: (1) there were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had $16,999 million or less in annual receipts and 7002 of these firms had $24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had $16,999 million or less in annual receipts and 1013 of these firms had $24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than $5 million in annual receipts.

19. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this Report and Order.

20. *Description of Reporting, Recordkeeping and Other Compliance Requirements.* This analysis examines the costs and administrative burdens associated with our rules and requirements. To the extent expressly relied upon in responding to a program access complaint, the rules we adopt require program access defendants to attach documents within their control to their answer or other responsive pleading permitted by the Commission. In addition, the rules we adopt, in certain situations, require program access complainants and defendants to negotiate in good faith regarding the amount of damages based upon a Commission-approved computation methodology. The Commission believes, however, that this requirement would not necessitate significant additional costs or skills beyond those already utilized in the ordinary course of business by MVPDs and program producers and distributors.

21. *Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered.* We believe that our amended rules relating to program access will have a positive impact on small entities. The purpose of the program access provisions is to prohibit unfair or discriminatory practices in the sale of satellite cable and satellite broadcast programming and increase competition and diversity in the multichannel video programming market. Small entities play an important role in effectuating this purpose. The rules we adopt will enable small entities to more fairly and expeditiously obtain programming and compensate such entities, in appropriate circumstances, when such programming is denied or

obtained through unfair rates, terms or conditions.

22. Report to Congress. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). The *Report and Order* and this FRFA (or summaries thereof) will be sent to the Chief Counsel for Advocacy of the Small Business Administration. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the *NPRM* in this proceeding. The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the *NPRM*, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') in this *Report and Order* conforms to the RFA.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1003 is amended by adding paragraph (c)(5), revising paragraphs (d)(1), (d)(2), (e), and (s)(1), and adding paragraph (s)(3) to read as follows:

§ 76.1003 Adjudicatory proceedings.

* * * * *

(c) * * *

(5) *Damages requests.* (i) In a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim in accordance with the requirements of paragraph (c)(iii) of this section.

(ii) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded if the complaint complies fully with the requirement of paragraph (c)(iii) of this section where the defendant knew, or should have known that it was engaging in conduct violative of section 628 of the Communications Act.

(iii) In all cases in which recovery of damages is sought, the complainant shall include within, or as an attachment to, the complaint, either:

(A) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(B) An explanation of:

(*1*) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(*2*) The reason such information is unavailable to the complaining party;

(*3*) The factual basis the complainant has for believing that such evidence of damages exists; and

(*4*) A detailed outline of the methodology that would be used to create a computation of damages when such evidence is available.

* * * * *

(d) *Answer.* (1) Any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. To the extent that a cable operator, satellite cable programming vendor or satellite broadcast programming vendor expressly references and relies upon a document or documents within its control in asserting a defense or responding to a material allegation, such document or documents shall be included as part of the answer. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any defendant failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

* * * * *

(e) *Reply.* Within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters. Failure to reply will not be deemed an admission of any allegations contained in the answer, except with respect to any affirmative defense set forth therein. Replies containing information claimed by defendant to be proprietary under paragraph (h) of this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the defendant.

* * * * *

(s) *Remedies for violations.*—(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, (i) the imposition of damages, and/or

(ii) the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor. Such order shall set forth a timetable for compliance, and shall become effective upon release.

* * * * *

(3) *Imposition of damages.* (i) *Bifurcation.* In all cases in which damages are requested, the Commission may bifurcate the program access violation determination from any damage adjudication.

(ii) *Burden of proof.* The burden of proof regarding damages rests with the complainant, who must demonstrate with specificity the damages arising from the program access violation. Requests for damages that grossly overstate the amount of damages may result in a Commission determination that the complainant failed to satisfy its burden of proof to demonstrate with specificity the damages arising from the program access violation.

(iii) *Damages adjudication.* (A) The Commission may, in its discretion, end adjudication of damages with a written order determining the sufficiency of the damages computation submitted in accordance with paragraph (c)(5)(iii)(A) of this section or the damages computation methodology submitted in accordance with paragraph (c)(5)(iii)(B)(*4*) of this section, modifying such computation or methodology, or requiring the complainant to resubmit such computation or methodology.

(*1*) Where the Commission issues a written order approving or modifying a damages computation submitted in accordance with paragraph (c)(5)(iii)(A) of this section, the defendant shall

recompense the complainant as directed therein.

(*2*) Where the Commission issues a written order approving or modifying a damages computation methodology submitted in accordance with paragraph (c)(5)(iii)(B)(*4*) of this section, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated methodology.

(B) Within thirty days of the issuance of a paragraph (c)(5)(iii)(B)(*4*) of this section damages methodology order, the parties shall submit jointly to the Commission either:

(*1*) A statement detailing the parties' agreement as to the amount of damages;

(*2*) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(*3*) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(C) (*1*) In cases in which the parties cannot resolve the amount of damages within a reasonable time period, the Commission retains the right to determine the actual amount of damages on its own, or through the procedures described in paragraph (s)(3)(iii)(C)(*2*) of this section.

(*2*) Issues concerning the amount of damages may be designated by the Chief, Cable Services Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge.

(D) Interest on the amount of damages awarded will accrue from either the date indicated in the Commission's written order issued pursuant to paragraph (s)(3)(iii)(A)(*1*) of this section or the date agreed upon by the parties as a result of their negotiations pursuant to paragraph (s)(3)(iii)(A)(*2*) of this section. Interest shall be computed at applicable rates published by the Internal Revenue Service for tax refunds.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[FCC 98–167]

800 MHz SMR Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses several petitions filed since the Commission adopted the *Goodman/Chan Order*, published elsewhere in this issue of the **Federal Register**, on May 22, 1995 and addresses certain issues relating to certain General Category Specialized Mobile Radio (SMR) Licenses. Dismissing the outstanding pleadings and addressing these other issues removes the impediments to implementing the relief the *Goodman/Chan Order* granted. Implementing the relief will allow the licensees to construct and/or transfer their licenses and give prospective bidders a clear idea on available spectrum in the upcoming lower band auction.

DATES: Licensees have four months from August 27, 1998 to complete construction of their licenses.

FOR FURTHER INFORMATION CONTACT: Terry Fishel at (717) 338–2602 or Ramona Melson or David Judelsohn at (202) 418–7240.

SUPPLEMENTARY INFORMATION:

1. In this document the Commission addresses several pleadings that have been filed since the adoption of the *Goodman/Chan Order*. The Commission dismisses the Brown and Schwaninger petition for reconsideration of the *Goodman/Chan Order* because the Brown and Schwaninger Petition was filed after the statutory deadline for submission of such petitions. Second, the Commission dismisses a motion for clarification filed by Daniel R. Goodman (Goodman) of the *Goodman/Chan Order* because it similarly was filed after the statutory deadline for such pleadings. Further, the Commission dismisses a petition for reconsideration, filed by Goodman, of the November 20 Staff Letter, discussing the processing of the General Category SMR licenses that received a four-month extension of their construction periods per the *Goodman/Chan Order*. Finally, the Commission addresses certain issues relating to certain General Category SMR Licenses. By dismissing the outstanding pleadings filed against the *Goodman/Chan Order*, dismissing the Receiver's December 1 Petition for Reconsideration of the November 20 Staff Letter and addressing these other issues, this Order removes the impediments to implementing the relief the *Goodman/Chan Order* granted.

2. On January 11, 1994, the Federal Trade Commission (FTC) filed a Complaint for a permanent injunction and other relief against a number of application preparation companies in the United States District Court, Southern District of New York (U.S. District Court). Prior to the FTC action, the application preparation companies used television commercials and telemarketing solicitations to promote SMR licenses as ''investment opportunities'' for individuals with little or no experience in the communications industry. On January 14, 1994, the U.S. District Court issued a preliminary injunction freezing the assets of the application preparation companies, and appointed Goodman as the Receiver (Receiver) for four of these companies (Receivership Companies). The U.S. District Court directed the Receiver to use all reasonable efforts to ensure that the licenses are either (1) constructed and placed in operation in a timely manner, in substantial conformance with our regulations, or (2) assigned to an entity which will use reasonable efforts to do the same.

3. On March 15, 1994, and March 21, 1994, respectively, Dr. Robert Chan (Chan) and the Receiver filed petitions for waiver of § 90.633 of our rules to allow certain SMR licensees additional time to construct facilities and commence operation. The Goodman Petition was brought on behalf of approximately 2500 individuals (Goodman/Chan Receivership) who had obtained approximately 4400 conventional licenses on 800 MHz General Category channels by using the services of one of the Receivership Companies.

4. In his waiver petition, the Receiver requested an eight-month extension of time for the Goodman/Chan Receivership to construct their licensed facilities and commence operations, starting from the petition grant date. The Receiver also requested a Stay of all automatic cancellations of licenses during the pendency of the Goodman Petition. On April 29, 1994, the Receiver filed a supplement to his March 21, 1994 waiver petition, requesting that the PRB refrain from taking any action that would result in the cancellation of the General Category licenses of the licensees who received their licenses through the Receivership Companies during the pendency of the Receiver's waiver request. The Receiver also requested that the PRB suspend the mailing of automated letter inquiries to the affected licensees concerning the construction and loading status of their licenses. In the event that the Receiver's petition for waiver was denied, the Receiver requested that the PRB provide the licensees a period of 120 days from the date of such denial to comply with the provisions of § 90.633 of the rules. In the Supplemental Petition, the Receiver also filed his initial list of approximately 3,100 entities that had obtained their licenses or applications

through the Receivership Companies (April List).

5. On May 22, 1995, the Commission adopted the *Goodman/Chan Order*, providing the General Category licensees who received licenses through the Receivership Companies an additional four months to construct and commence operations of their licenses. The Commission partially granted the Goodman/Chan waiver petitions because during the pendency of the waiver petitions, it had changed the construction period for all new CMRS licenses, including conventional SMR licenses, from eight months to twelve months. Thus, the basis for granting the additional four months to these licensees was to place them in the same posture as part 90 CMRS providers licensed after January 2, 1995, when the new rule took effect. This four-month period was granted to augment their original eight-month construction period to the degree necessary to give them the same twelve-month construction period then applicable to all part 90 CMRS licensees. However, the Commission also emphasized that all other requirements of the rules continued to apply. In particular, the Commission stated that the Order did not waive the loading requirement, and reiterated that licensees on General Category channels would not retain exclusive use of their channels unless they satisfied the loading of seventy mobile stations per channel. To the extent petitioners had less than seventy such stations operating on each of their channels, additional licensees could be licensed to use those channels.

6. The Commission granted both the Receiver's Supplemental Petition and the Receiver's May 31 Reinstatement Request. The Commission also stated that the four-month-period would commence upon publication of the *Goodman/Chan Order* in the **Federal Register**. As discussed below, publication of the *Goodman/Chan Order* has not yet occurred.

7. On June 26, 1995, Brown and Schwaninger filed a petition for reconsideration of the *Goodman/Chan Order.* On July 17, 1995, the Receiver filed both an Opposition to the Brown and Schwaninger Petition and an Emergency Motion for Clarification or Stay of the *Goodman/Chan Order.* In addition, the Receiver and his counsel, over the course of several months following the release of the *Goodman/Chan Order,* alerted our staff to the grant of a number of co-channel and short-spaced licenses concerning 342 of the Goodman/Chan licenses. The 342 licenses include 208 co-channel licenses, 42 short-spaced licenses, and 92 cancelled licenses. Through subsequent requests, the Receiver now also seeks to address issues concerning 296 other licenses licensees voluntarily cancelled. On November 20, 1995, the Wireless Telecommunications Bureau's Office of Operations in Gettysburg issued a letter which addressed the following issues raised by the Receiver: (1) the Commission's granting of co-channel licenses in instances where the Goodman/Chan Receivership had not fully loaded their channel; (2) the Commission's granting of co-channel licenses between fifty-five and seventy miles of a Goodman/Chan Receivership Licensee; (3) voluntary cancellations by members of the Goodman/Chan Receivership; and (4) the Commission's treatment of cases where frequency coordinators made frequency recommendations for other applicants for locations that were the same as, or within fifty-five miles of, a Goodman/Chan Receivership Licensee.

8. Simultaneous with the release of the November 20 Staff Letter, the Bureau submitted the *Goodman/Chan Order* for publication in the **Federal Register**. In response, the Receiver's counsel informed the Bureau that the Receiver would appeal the Nov. 20 Staff Letter and would also seek injunctive relief should the Bureau attempt to publish the *Goodman/Chan Order* in the **Federal Register**. Even though the Commission in the *Goodman/Chan Order* granted an extension of the construction period for approximately 4400 licenses, on November 27, 1995, the Receiver filed a motion with the United States Court of Appeals for the DC Circuit to enjoin **Federal Register** publication of the *Goodman/Chan Order* to obtain additional time to address licensing issues affecting 342 licenses. On December 1, 1995, the Receiver filed its December 1 Petition seeking reconsideration of the November 20 Staff Letter and a request to stay publication of the *Goodman/Chan Order* pending revocation of the overfiled licenses. The court subsequently held in abeyance the motion to enjoin **Federal Register** publication to allow the Receiver and the Commission to seek a resolution of the issues. On April 30, 1996, the DC Circuit ordered that the case continue to be held in abeyance and directed the parties to file a status report sixty days from the date of this order and every sixty days thereafter. In the most recent status report, we indicated that Bureau staff was in the process of drafting the present *Memorandum Opinion and Order and Order on Reconsideration.* The court also directed the parties to file motions to govern further proceedings within thirty days of the conclusion of the settlement negotiations. Since that time, the Receiver has submitted several letters and other filings requesting the resolution of various licensing issues affecting the status of the licenses.

9. Because Brown and Schwaninger did not file its petition until Monday, June 26, 1995, its petition was late and must be dismissed as untimely filed. We find that the Receiver's ''Motion for Clarification'' must be treated as a petition for reconsideration of the *Goodman/Chan Order* because it requests that we reconsider our decision regarding the formulation of the relief provided in the *Goodman/Chan Order.* As such, because the Receiver asked that something in the *Goodman/Chan Order* be changed, the Receiver's Motion for Clarification is subject to section 405 of the Communications Act of 1934, as amended, and our rules regarding the timely filing of petitions for reconsideration, and therefore cannot be considered. Because the Receiver did not file his Motion for Clarification until July 17, 1995, it is an untimely filed petition under the same authority discussed above, thereby precluding its consideration. Therefore, we dismiss the Motion for Clarification as untimely filed.

10. Although we do not grant the Receiver standing, we will use our discretion and resolve these issues on our own motion in this *Memorandum Opinion and Order and Order on Reconsideration.* We believe it is in the public interest to resolve these issues prior to commencement of the 800 MHz SMR Phase II auction scheduled for later this year. Consistent with the Balanced Budget Act of 1997, expeditious resolution of these matters will provide prospective bidders with sufficient information in advance of the auction to prepare business plans, assess market conditions, and evaluate the availability of equipment for the relevant services. Accordingly, because it is in the public interest to resolve all outstanding issues concerning these General Category licenses expeditiously, we will address the licensing issues raised by the Receiver on our own motion. We will also address here the waiver requests of other General Category licensees for an extension of time to construct their facilities. Accordingly, we will provide general guidance on the following issues: (1) the co-channel licensing rules; (2) the short-spacing rules; (3) the license cancellation rules; (4) the license renewal rules; (5) the prohibition on the transfer of unconstructed licenses; and

(6) the waiver requests filed by other General Category Licensees.

11. The Commission granted the Goodman/Chan Receivership licensees an opportunity to avoid license cancellation eight months after license grant through the extraordinary relief of providing additional time to construct and place their facilities in operation. Although it may be ambiguous whether the Receiver either requested or received additional time for licensees to obtain exclusivity, it is clear that each Receivership licensee certified to place seventy mobiles in operation within eight months of license grant, but failed to do so. The Receiver did not seek a stay of further licensing on each affected channel despite the facts that (1) our rules provide that General Category channels are not automatically subject to exclusive use, and (2) the Receivership licensees lost their ability to prevent further licensing on each of their channels when they failed to satisfy their commitment to achieve loading of seventy mobile stations on or before eight months after license grant. Moreover, there is nothing in our *Goodman/Chan Order* that can be read to prevent additional licensing on the channels at issue. While many conventional initial licensees represented that they planned to place seventy mobile stations on their channel by the end of their eight-month, and now one-year, loading period, our rules do not require licensees to load seventy mobiles on their channels and not everyone fulfills this requirement for exclusivity. Some licensees have more modest assessments of what their loading will be, and, prior to the freeze on licensing of General Category channels, we granted co-channel licenses on channels where the incumbent licensee did not fully load. While the Goodman/Chan Receivership claimed to intend to place seventy mobiles on each of their channels, as we have noted, ample facts in the record demonstrate that members of the Goodman/Chan Receivership had no plans to do so, nor were they even aware of the requirement for exclusivity.

12. While the petitions were pending, and prior to the release of the *Goodman/Chan Order*, the Licensing Division, in accordance with its standard procedure, sent out automated inquiries to a number of Goodman/Chan Receivership Licensees to determine the extent to which the licensees had loaded their channels. In 208 instances, Goodman/Chan Receivership licensees responded that they had not loaded their channels with seventy mobile stations, and, as a result, the Licensing Division granted additional licenses to share the channels with these licensees, pursuant to § 90.633(b) of our rules. Because none of these 208 licenses were fully loaded, our staff did not rescind any co-channel licenses already authorized on the same channels with these Goodman/Chan Receivership licensees. However, in an additional thirty-eight instances in which Goodman/Chan Receivership licensees responded that they had not fully loaded their channels, our staff did not process applications for co-channel use and agreed not to grant the thirty-eight pending applications for co-channel use. However, in accordance with our conclusion that these licensees had no entitlement to exclusive use of the channels, we find that the agreement not to review and process the thirty-eight pending applications for co-channel use was in error because the *Goodman/Chan Order* did not freeze new licensing on these channels. Therefore, the Wireless Telecommunications Bureau should have reviewed and processed these applications pursuant to the Commission's rules.

13. Although we granted the Receiver's Supplemental Petition, we find no contradiction between the grant of the Supplemental Petition and our licensing of co-channel licensees on channels licensed to Goodman/Chan licensees. Thus, we affirm the Licensing Division's decision to decline to rescind co-channel licenses granted on channels occupied by Goodman/Chan Receivership Licensees who reported that they had not fully loaded their channels. The Supplemental Petition requested that we (1) issue a stay of any cancellation of the affected General Category licenses during the pendency of the waiver request; (2) suspend the mailing of automated inquiries to the affected General Category licensees; (3) grant the affected licensees a 120-day period to comply with § 90.633 of our rules if we denied the waiver petition; and (4) grant such other relief that is consistent with the relief sought in the Supplemental Petition. The actions of our staff are consistent with the *Goodman/Chan Order* because the Commission did not grant a freeze of additional licensing on these channels, nor did the Goodman/Chan licensees file timely petitions for reconsideration of the additional co-channel license grants. Further, the staff did not cancel any Goodman/Chan licenses through issuance of co-channel licenses to entities who presumably sought to provide service on the same channels licensed to members of the Receivership. We also conclude that the Division's mailing of automated inquiries was proper and did not harm the Goodman/Chan licensees because the information received from the responding licensees indicated that, eight months after license grant, they had not placed into operation the minimum number of seventy mobiles needed to retain exclusivity.

14. The Receiver contends that some new licensees were granted licenses for sites in violation of our mileage separation criteria. We disagree. For conventional systems, the Bureau assigned frequencies in accordance with our applicable loading criteria. Thus, the staff permitted co-channel licensing where the channel was not licensed exclusively to one licensee because the licensee failed to load at least a minimum of seventy mobile stations on the channel. However, when a licensee loaded at least seventy mobile stations on a channel, § 90.621(b) of our rules required that the fixed mileage separation between co-channel systems be a minimum of 113 kilometers (seventy miles). Applicants were permitted to locate co-channel systems closer than seventy miles if (1) the channel was not fully loaded, (2) the applicant complied with either the consensual short-spacing rule, or the technical short-spacing rule, or (3) the applicant received a waiver of the mileage separation rule.

15. The consensual short-spacing rule allowed an applicant to place a co-channel system at any distance within the minimum separation distance as long as each co-channel licensee within the specified separation consented to accept any interference resulting from the reduced separation between the systems. The technical short-spacing rule allowed co-channel licensing between fifty-five and seventy miles, but only if the applicant proposed to operate at reduced power and antenna height pursuant to a table set forth in our rules. Applicants could also request a waiver of the mileage separation rule by submitting an interference analysis that showed the co-channel stations would receive the same or greater interference protection than provided in the technical short-spacing rule.

16. In the November 20 Staff Letter, the staff concluded that the Receiver failed to provide substantiation on the short-spacing issue at the time of its request and there was no evidence that the Licensing Division erred in granting these licenses. The Receiver has not submitted any additional information that would persuade us otherwise. Accordingly, we now decline to cancel or modify any of the short-spaced licenses identified by the Receiver.

17. The Licensing Division found that it granted 188 short-spaced applications for channels licensed to Goodman/Chan licensees, not 318, as argued by the Receiver. Furthermore, the staff found that in 146 of the 188 short-spaced licensing instances, the Goodman/Chan Receivership licensees had, through properly executed short-spacing agreements, consented to sharing a channel with other licensees, and thus the frequency coordinations were proper. Such ''short-spaced'' frequency recommendations are permitted when the requesting applicant submits documentation showing consent from the licensee whose station is to be affected by the short-spacing. Consequently, the licensing decisions with respect to these 146 channels was in full accord with the co-channel and short-spacing rules.

18. In the remaining forty-two instances where no short-spacing agreement existed, the applicant must comply with the technical short-spacing rule or receive a waiver of the mileage separation rule if the licensee licensed on the channel has loaded the channel with at least seventy mobile stations. The staff concluded that although the forty-two remaining instances were apparently granted in error due to lack of short-spacing agreements, the licenses should not be set aside. Our staff concluded that the frequency coordinators should work with the Goodman/Chan Receivership licensees to reach an equitable solution to the mileage separation problem. The staff agreed to closely scrutinize the construction and loading performance of the licensees who received short-spaced licenses to the Goodman/Chan Receivership Licensees and to cancel these licenses, pursuant to our rules, in cases where our construction requirements were not timely met. Through the monitoring of these forty-two licenses, the staff has determined that fourteen have fulfilled their construction requirements. The rest were automatically cancelled pursuant to § 90.633(d) of our rules.

19. The Receiver argues that the Licensing Division's decisions with respect to the fourteen licenses where no short-spacing agreements existed are in direct contravention to the *Goodman/Chan Order.* Technical short-spacing allows applicants to locate their systems closer together than seventy miles upon a technical showing of non-interference. Although the staff believed that the fourteen licenses may have been granted in error because the recommendations of the frequency coordinator could not be substantiated by short spacing agreements, our review of the records shows that the fourteen Goodman/Chan licenses were not fully loaded. A conventional SMR licensee receives eight months to load a minimum of seventy mobile stations on its channel in order to retain exclusivity. However, if the channel does not have a minimum of seventy mobile stations on its channel at the time the eight month period expires, another licensee may be granted on that channel. As a result, even though these fourteen licensees did not agree to be short-spaced, our Licensing Division correctly granted a license within seventy miles because the channels were not exclusive and were not entitled to the standard seventy mile separation between co-channel systems. Therefore, we affirm the decision of the Licensing Division to allow the fourteen non-Goodman/Chan Receivership licenses to remain.

20. The Receiver seeks reinstatement of 106 Goodman/Chan Receivership Licenses where the licenses were cancelled based on the licensees' failure to respond to automated inquiry letters from the staff seeking confirmation that the licensees had constructed their facilities and commenced operations. The Receiver argues that these licenses were improperly cancelled because the *Goodman/Chan Order* granted the Receiver's request that the Commission not send construction inquiries to Goodman/Chan Receivership Licensees after March 21, 1994. The staff was not, however, provided with the data necessary to identify the Receivership licenses, and thereby modify the automated licensing system to prevent sending automated inquiries to Receivership licensees. The *Goodman/Chan Order* expressly provided for reinstatement of fourteen licenses under these circumstances. Thus, these licenses will be reinstated upon publication of the *Goodman/Chan Order* in the **Federal Register**.

21. The Receiver also alerted us to the existence of an additional ninety-two cancelled licenses on February 3, 1998. We will reinstate all of these licenses granted prior to January 2, 1995. We have determined that approximately sixty of the ninety-two licenses were granted after January 2, 1995 and therefore received a twelve-month construction period. Because the basis for the relief granted in the *Goodman/Chan Order* was to place the Goodman/Chan licensees in the same posture as other Part 90 CMRS providers who were given a twelve-month construction period, these sixty licenses are not eligible for relief and therefore will not be reinstated. We agree to reinstate the remaining licenses because they are similarly situated to the original fourteen cancelled licenses that the Commission agreed to reinstate in the *Goodman/Chan Order.* We will not, however, cancel any co-channel license that has since been granted on a channel that we reinstate with this Order for the reasons discussed in para. 41, *supra.*

22. The Receiver also identifies 296 licensees who voluntarily cancelled their licenses while the Goodman Petition was pending, after which they reapplied for and received new licenses at the same locations. As a result, these licensees were not among those licensees who were granted extensions of the construction deadline by the *Goodman/Chan Order.* The Receiver requests that these licensees receive the same extended construction period as other Goodman/Chan Licensees. We deny this request. These licensees affirmatively chose to cancel their licenses while the Goodman Petition was pending because they preferred to obtain new licenses with one-year construction periods, rather than continue to press their extension requests. We conclude that, as a result of their decision to cancel their licenses, these licensees no longer have standing to obtain relief under the *Goodman/Chan Order.* We conclude that their rights as licensees are determined by their subsequent authorizations. Furthermore, these licensees obtained their new licenses after January 2, 1995, and therefore received a twelve-month construction period. Because the purpose of the additional four-month construction period provided for in the *Goodman/Chan Order* was to place the Goodman/Chan Receivership Licensees in the same posture as other part 90 CMRS providers, and thereby give them a total of twelve months to construct, these 296 licensees do not require and are not eligible for such relief. Therefore, we find that these licensees will not be granted an additional four months to construct.

23. The license term of some Goodman/Chan Receivership licenses will likely expire prior to the end of the additional four month construction period. Pursuant to § 90.149(a), the license term for General Category channels is five years. Because our rules do not allow for renewal of unconstructed licenses, the Receiver requests that the terms of such licenses be extended to enable these licensees to complete construction on the same basis as other licensees, so that they will then be eligible for renewal.

24. It is the responsibility of each licensee to apply for renewal of its license prior to the expiration date of the license. According to the Commission's rules, 800 MHz SMR

licensees will receive an Application for Renewal of Private Radio Station License Form (FCC Form 574–R) in the mail from the Commission. If within sixty days before the scheduled expiration of the license, the licensee has not received FCC Form 574–R, the licensee should file a Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information Form (FCC Form 405–A) before the expiration date of the license to renew the license. Thus, failure of a licensee to receive a FCC Form 574–R from the Commission is no excuse for failure to file a renewal application. The license renewal application should be filed no more than ninety days nor less than thirty days prior to the end of the license term in accordance with the Commission's rules and the instructions for the appropriate form. In accordance with our rules, failure to file a license renewal application prior to the license expiration date results in the automatic cancellation of the license on its expiration date. However, because of the unique circumstances of this case, if the licensee has timely filed the appropriate license renewal form, we will toll the expiration of the license until the end of the four-month construction period. If at the end of that time, the licensee has fully constructed its authorization and commenced operations, we will grant the license renewal. We will not grant any renewal application if the licensee fails to construct or place the station in operation before the expiration of the four-month period.

25. To assist in the potential recovery by members of the Goodman/Chan Receivership of their monetary losses, the Receiver requests that we facilitate efforts by the Goodman/Chan Receivership to assign their licenses to other SMR operators prior to the expiration of the construction period for such licenses. In the *800 MHz SMR Second Report and Order,* we temporarily waived the provisions of § 90.609(b) of our rules to facilitate the relocation of Incumbent licensees from the upper 200 channels to the lower 230 channels as well as to facilitate geographic licensing. Thus, we allowed the assignment or transfer of unconstructed licenses on the lower 80 and General Category channels ''to encourage [the] rapid migration of incumbent [licensees], preferably through voluntary negotiations, from the upper 200 channels to lower band 800 MHz channels.'' In addition, the Commission stated that relaxing our transfer restrictions facilitates geographic licensing of the lower channels themselves. The Commission also advised incumbents to modify their holdings in advance of the auction through transfers or channel swaps and new entrants to position themselves for the auction by acquiring existing licenses in areas where they intend to bid.

26. Under this waiver, the Bureau accepted transfer applications for unconstructed licenses on these channels until six months after the conclusion of the 800 MHz upper band auction, *i.e.*, until June 8, 1998. We further provided that in the event of a transfer or assignment, the transferee would be subject to the same construction deadline as the transferor, unless the transferee had extended implementation authority. In the latter case, we stated that we would allow licensees to apply their system-wide construction deadlines to licenses acquired by transfer within their pre-existing footprint.

27. We determine that the Goodman/Chan Receivership and similarly situated non-Goodman Chan General Category SMR licensees who have not yet constructed may, during the ninety day period beginning on the day the *Goodman/Chan Order* is published in the **Federal Register**, apply to transfer or assign unconstructed licenses that have received construction extensions pursuant to the *Goodman/Chan Order* and this *Memorandum Opinion and Order and Order on Reconsideration.* We believe the same special circumstances that existed in the *800 MHz SMR Second Report and Order* that facilitated the need to temporarily waive § 90.609(b) of our rules exist here; namely, the need to encourage rapid migration of incumbents, preferably through voluntary negotiations, from the upper 200 channels to lower band 800 MHz channels, and facilitate geographic licensing as set out in the *800 MHz SMR Second Report and Order.* Accordingly, we believe it is in the public interest to allow transfers and assignments that will facilitate the relocation of incumbent licensees from the upper 200 channels to the lower band 800 MHz channels or geographic licensing of the lower channels themselves. All such transfer and assignment requests require prior Commission approval pursuant to section 310(d) of the Communications Act, as amended. All such transfer and assignment requests must be made by the individual licensees, as the Receiver does not have standing to file such requests. If the transfer or assignment is approved, the transferee will be subject to the same construction deadline as the transferor, unless the transferee has pre-existing extended implementation authority and the license to be transferred is within the geographic footprint of the extended implementation system. For purposes of this order, we define the ''footprint'' using the 18 dBμ interference criteria established for lower band systems in the *800 MHz Second Report and Order; i.e.*, any site will be considered in the extended implementation licensee's footprint if it is within the 18 dBμ interference contour of an existing site that is part of the system for which the transferee has received extended implementation authority. In such cases, the transferee may incorporate the transferred license into its extended implementation authorization, and apply the construction deadline applicable to the system as a whole.

28. We recognize that the ninety day period is much shorter than the six month period authorized by the *800 MHz SMR Second Report and Order.* In providing a shorter period, we weighed the competing interests of licensees who desire to bid at auction for the geographic licenses in the lower 230 SMR channels against the interests of the Goodman/Chan Receivership to receive a fair opportunity to construct their channels. Thus, although we will allow the Goodman/Chan Receivership ninety days to transfer and assign unconstructed licenses, we will not accept FCC Form 175s for the Phase II auction before January 15, 1999, which is over five months after release of this Order. This delay in accepting FCC Form 175s will permit the four month construction period to run as intended. We believe that this accommodation for the Goodman/Chan Receivership will allow prospective bidders to obtain accurate and complete information concerning the lower 230 SMR channels while providing the Goodman/Chan Receivership with the full four month period to construct. The Balanced Budget Act of 1997 requires that we provide prospective bidders with sufficient information in advance of an auction to prepare business plans, assess market conditions, and evaluate the availability of equipment for relevant services. Therefore, in order to give prospective bidders sufficient time to prepare in advance of the auction, the present matter needs to be resolved as quickly as possible.

29. If the Goodman/Chan licensee shares the General Category channel, the assignee would acquire the same shared status. To the extent that a Goodman/Chan licensee is the sole occupant of a General Category channel, that licensee has de facto exclusive use: the General Category licensing freeze has been in place now for more than a year, precluding any new licensing.

Moreover, new licensing of General Category channels will not occur for several months, when the Commission conducts an auction to award geographic area licenses. The transferee of this type of Goodman/Chan license thus acquires an expectancy of achieving exclusive channel use. The expectancy would be met provided that the assignee or transferee incorporates the channel into an aggregately loaded system, or demonstrates loading at the constructed site of seventy mobiles.

30. Although the *Goodman/Chan Order* does not extend relief to any licensee other than the Goodman/Chan Receivership, we conclude that similarly situated General Category SMR licensees should receive the same four-month construction period extension granted therein. In the *Goodman/Chan Order,* we based our limited grant of relief on the fact that during the pendency of the petition, we had replaced our eight-month construction requirement with a twelve-month construction requirement for SMR licensees licensed in the General Category. We granted the Goodman/Chan Receivership Licensees a four-month extension to their original eight-month construction period to place them in the same posture as other SMR licensees who had obtained twelve months to construct.

31. We believe the same relief should be extended to similarly situated non-Goodman/Chan General Category SMR licensees. However, in order to be granted this limited relief, these licensees must have originally been granted an eight-month construction period and must have a valid extension request on file with the Commission. Eligible licensees will receive the same four-month period to construct that we granted to the Goodman/Chan Receivership, which is a period of four months to begin upon publication of the *Goodman/Chan Order* in the **Federal Register**.

32. In this *Memorandum Opinion and Order,* we dismiss the Receiver's December 1 Petition. We find that the Receiver, Daniel R. Goodman, does not have standing to file the December 1 Petition. Individual licensees are therefore responsible to address the Bureau with individual licensing problems. We also conclude that both the Goodman/Chan Receivership and other similarly situated General Category Licensees shall have four months to construct and commence operation of their licensed facilities from the date that the *Goodman/Chan Order* is published in the **Federal Register**. We will not cancel any subsequently granted licenses on channels occupied by members of the Goodman/Chan Receivership who reported that they had not fully loaded their channels. We also decline to cancel properly granted co-channel licenses.

33. We direct the Bureau to reinstate the fourteen licenses reinstated by the *Goodman/Chan Order,* as well as thirty-two of the additional ninety-two licenses identified by the Receiver on February 3, 1998. We will allow the Goodman/Chan Receivership and other General Category licensees to transfer unconstructed licenses until ninety days after the release of this *Memorandum Opinion and Order and Order on Reconsideration.* Lastly, on our own motion, for those licensees whose license is scheduled to expire prior to the end of the four-month construction period, we will toll the license term to coincide with the last day of the four-month construction period, so long as the affected licensees previously timely filed a license renewal application. We deny the Receiver's February 3 Reinstatement Petition, to the extent provided in this *Memorandum Opinion and Order and Order on Reconsideration.* We also dismiss both the Brown and Schwaninger Petition and the Receiver's Motion for Clarification as untimely filed. In conjunction with the D.C. Circuit action holding in abeyance the stay request brought by the Receiver, our Office of General Counsel has stated to the Court that the *Goodman/Chan Order* will not be published in the **Federal Register** until the Court has an opportunity to consider the pending Motion for Stay. Accordingly, as a matter of courtesy, we instruct the Secretary not to submit this *Memorandum Opinion and Order and Order on Reconsideration* and the *Goodman/Chan Order* to the Office of the Federal Register for publication in the **Federal Register** until twenty days after the release date of this Order. This twenty-day deferral of submission will afford the Receiver an opportunity to advise the Court of its intention with respect to the stay request and, should the Receiver pursue that litigation, the Court will have an opportunity to rule.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[FCC 95–211]

800 MHz SMR Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses petitions for waiver which establishes the maximum period for Specialized Mobile Radio (SMR) licensees to construct their facilities and commence operation. The document grants certain licensees an additional four months to construct and commence operations of their licenses. The Commission partially granted the waiver petitions because during the pendency of the waiver petitions, it had changed the construction period for all new Commercial Mobile Radio Service (CMRS) licenses, including conventional SMR licenses, from eight months to twelve months. Thus, the basis for granting the additional four months to these licensees was to place them in the same posture as CMRS providers licenses after January 2, 1995, when the new rule took effect.

DATES: Licensees have four months from August 27, 1998 to construct and commence operation of their licenses.

FOR FURTHER INFORMATION CONTACT: Terry Fishel at (717) 338–2602 or Ramona Melson or David Judelsohn at (202) 418–7240.

SUPPLEMENTARY INFORMATION:

1. This order addresses petitions for waiver of Section 90.633(c) of the Commission's Rules, which establishes the maximum period for Specialized Mobile Radio (SMR) licensees to construct their facilities and commence operation. The petitions were filed on March 15, 1994 and March 21, 1994, respectively, by Dr. Robert Chan and Daniel R. Goodman. On April 6, 1994, the Private Radio Bureau released a *Public Notice* 59 FR 17547 (April 13, 1994) seeking comments on the Goodman and Chan petitions. Based on the facts set forth in the petitions and the comments filed in this matter, we conclude that the waivers requested by Chan and Goodman should be granted to the extent described below.

2. The Goodman and Chan petitions are brought by or on behalf of approximately 4,000 individuals who have obtained 800 MHz conventional SMR licenses on General Category channels by using the services of one of

several companies that are the subject of an enforcement action brought by the Federal Trade Commission. These companies have used TV infomercials and telemarketing solicitations to promote SMR licenses as ''investment opportunities'' for individuals. The typical service offered by these companies is to prepare SMR applications for a substantial fee (usually $7000 per application). The companies typically induce potential customers to purchase these services by representing that SMR licenses have great value that can be recouped through subsequent resale of these licenses, but do not emphasize the obligations to which each licensee is subject.

3. The Commission has taken steps to protect the public against deception and misinformation. In December 1992, the Commission issued a public ''Consumer Alert'' regarding SMR licensing. Among other things, the alert stated that SMR licenses could be obtained directly from the FCC for a $35 fee, that licensees would be required to construct facilities within eight months or lose their licenses, and that licenses could not be sold or transferred prior to construction. The Commission also developed a consumer information packet, which is sent to individuals who contact the Commission after being solicited by SMR application companies. The Commission also assisted the Federal Trade Commission (FTC) in preparing a consumer information pamphlet issued in January 1994.

4. The Commission has actively cooperated with the Federal Bureau of Investigation, the FTC and the Securities Exchange Commission in investigations of SMR application companies. In January 1994, one such investigation culminated in a lawsuit brought by the FTC in U.S. District Court against four companies, Metropolitan Communications Corp., Nationwide Digital Data Corp., Columbia Communications Services Corp., and Stephens Sinclair Ltd. (the ''Receivership Companies''). In its complaint, the FTC alleged that approximately 4,000 individuals who were assisted by the Receivership Companies in obtaining licenses for conventional SMR channels were defrauded and misled as to the FCC rules by the sales practices of these companies. The first phase of the scheme involved selling consumers application preparation services for FCC licenses at excessive cost. In the second phase of the scheme, certain defendants used misrepresentations to solicit the purchase of shares in partnerships that would purportedly construct and operate SMR systems in various cities. On January 14, 1994, the court issued a preliminary injunction freezing the assets of the Receivership Companies and their principal officers and appointed Daniel R. Goodman as Receiver of the Receivership Companies.

5. *Waiver Requests.* On March 15, 1994, Dr. Robert Chan filed a petition for waiver on his own behalf as licensee of five SMR stations acquired through two of the Receivership Companies. Dr. Chan requested an additional year in which to build and place his facilities in operation. On March 21, 1994, Daniel Goodman, the court-appointed Receiver, filed a petition for waiver on behalf of all SMR licensees who have received licenses through the Receivership Companies. Noting that virtually no construction had taken place under these licenses and that automatic license cancellation was imminent, Goodman requested an eight month extension of time for all such licensees to construct and commence operations, starting from the petition grant date. Goodman also requested a 120-day emergency stay of all automatic cancellations of licenses during the pendency of the petition. Goodman indicated that its request for waiver was limited to the Commission's eight month construction deadline, and no request was made to waive any of the other requirements that apply to General Category channels.

6. On April 21, 1994, Goodman filed a supplement to his initial waiver request asking that we waive the Commission's requirement of a separate waiver fee for each individual license covered by the petition. On April 29, 1994, Goodman filed another supplement requesting that the Commission (1) issue a stay (retroactively effective January 14, 1994) of any cancellation of the exclusive SMR authorizations during the pendency of the waiver request; (2) suspend the mailing of automatic cancellation notices to affected licensees; and, (3) if the request for waiver is denied, grant the licensees a 120-day period from the date of such denial in which to construct their facilities. In this supplemental request, Goodman stated that petitioners needed ''an additional eight month period to construct and load their licensed facilities,'' indicating that compliance with the Commission's mobile loading requirements for the General Category channels was contemplated.

7. *Public Notice and Comments on Petitions.* On April 6, 1994, the Private Radio Bureau issued a Public Notice seeking comments and replies on the Goodman and Chan petitions. Approximately 300 comments and five replies were received. Many comments in support of the Goodman petition were submitted by individual licensees who received their licenses through the services of the Receivership Companies. In addition, the FTC has submitted a letter to the Commission supporting the Goodman petition. Oppositions to the waiver requests have been filed by major SMR operators, frequency coordinators, and trade associations, including Nextel Communications, Inc., the American Mobile Telecommunications Association, the Association of Public-Safety Communications Officials-International, National Association of Business and Educational Radio, American Digital Communications, the Industrial Telecommunications Association and Council of Independent Communication Suppliers, Express Communications, TC3M, Inc., and Brown and Schwaninger.

A. Receiver's Standing as Party in Interest

8. *Background and Comments.* As a threshold issue, several commenters argue that Goodman lacks standing to bring a waiver petition on behalf of multiple SMR licensees. These commenters note the apparent lack of an express agreement between the licensees (individually or as a group) and the Receiver for the latter to represent them. In addition, commenters assert that Goodman's status as Receiver is insufficient to make him a real-party-in-interest with respect to the licenses at issue. The Receiver's duty is to receive monies due and owing to the Receivership Companies so that these funds can be used to satisfy the debts of these companies and their creditors. Because any monies received from the sale of the licenses would go directly to the licensees and not to the Receivership Companies, commenters argue, the Receiver has no interest that would be affected by the request.

9. In reply, Goodman argues that he is the proper entity to submit waiver requests on behalf of all the licensees. First, Goodman argues that he should be recognized as having standing for reasons of administrative convenience because requiring each licensee to file an individual waiver petition would be unduly burdensome. Goodman also contends that because many of the licensees entered into management agreements with the Receivership Companies, the licensees depend on the Receiver to take whatever actions are necessary to preserve the validity of their authorizations. Finally, Goodman

alleges that no licensee has objected to the Receiver's filing of a petition on behalf of all licensees.

10. *Decision.* We conclude on grounds of administrative convenience that Goodman should be deemed to have standing to file the instant petition. Although this case involves multiple licenses, weighing the merits of the waiver request for each licensee involves evaluating a common fact situation rather than a diverse set of facts for each licensee. Because the request for waiver for all of the licensees is based on common facts, it would be a waste of time and resources to require each licensee to file individually. There is also no evidence that any licensee has objected to the Receiver filing the waiver petition on his or her behalf. For purposes of the Goodman petition, therefore, we believe that it is in the public interest to consider the Receiver as representing the interests of all licensees whose interests are affected by the FTC's action against the Receivership Companies.

B. Waiver of Application Fees

11. *Petition.* Section 1.1102 of the Commission's Rules requires waiver petitions to be accompanied by a $105 fee for each rule section that the petitioner seeks to waive multiplied by the number of stations to which the petition applies. Although the Goodman petition was filed on behalf of multiple licensees, Goodman has submitted only a single $105 waiver petition fee instead of a separate fee for each affected license. The Chan petition was not accompanied by any fee payment. Goodman has requested that the Commission waive the requirement of a separate fee for each license and accept the single payment as sufficient. Goodman argues that the public interest warrants waiving the fee requirement because the purpose of the underlying waiver petition is to allay potential financial hardship to defrauded licensees and a fee waiver would avoid a further depletion of the licensees' funds.

12. *Comments.* The Public Notice did not solicit comment on the Receiver's request for waiver of fees because it was filed subsequent to the release of the Public Notice. Nevertheless, a few comments on the issue of waiving filing fees were submitted. Express Communications in particular opposes waiving the fee requirement on the grounds that there is no provision in the rules to lump multiple requests together for a single fee.

13. *Decision.* Section 1.1115(a) of the Commission's rules permits the waiver of fees where good cause is shown and where waiver would promote the public interest. If we were to require a separate fee for each licensee that is covered by the Goodman petition, the total fees due (based on 4,000 licensees) would total $420,000. We believe that waiving this fee amount is in the public interest. The Goodman petition was filed in an attempt to limit the financial harm caused to licensees by the alleged fraudulent conduct of the Receivership Companies. The petition also raises substantive issues that we believe should be decided on the merits. We therefore conclude that good cause exists to waive the filing fee requirement. For the same reasons, we also waive the fee requirement with respect to the Chan petition on our own motion.

C. Waiver of Construction and Operation Deadline

14. *Petition.* In support of his waiver petition, Goodman contends that the individuals who obtained licenses through the Receivership Companies are threatened with an aggregate loss of $28,000,000 (calculated based on 4,000 licenses times the $7,000 application fee paid by each licensee) if their licenses are allowed to expire. Goodman states that neither the licensees nor the Receiver have the financial or technical resources to construct SMR facilities pursuant to their authorizations within the required eight-month period. Goodman states that he is in the process of negotiating and finalizing the sale and assignment of thousands of these licenses to large, legitimate, publicly-traded SMR companies. Because Commission rules do not allow the assignment or transfer of unconstructed SMR licenses, however, Goodman requests that the licensees be given additional time to construct so that they can then sell the stations and potentially recoup their investment. Without such an extension, Goodman contends, the number of licenses that may be transferred will be substantially diminished. The Receiver contends that if the licensees are granted additional time to construct, they will be able to place in operation and load their channels as required by our rules.

15. The Receiver acknowledges that many of the licensees on whose behalf the waiver is sought were unaware of their obligations under the Commission's Rules, including the intention to construct and operate and the eight month construction requirement. Goodman contends that their lack of knowledge should be excused, however, on the grounds that the licensees were defrauded by the Receivership Companies concerning their responsibilities as licensees. Goodman also notes that the Commission has granted extended construction periods for licensees of wide-area, multi-site SMR systems and urges us to treat the individual licensees in this case as similarly entitled to extended construction authority on a collective basis. Finally, Goodman argues that a waiver grant would not compromise efficient use of spectrum or otherwise be contrary to the public interest. If additional time for construction is allowed, he argues, the systems can be constructed and the Commission's policies fulfilled with only a brief delay.

16. The Chan petition raises essentially the same issues as the Goodman petition with respect to the five SMR licenses held by Dr. Chan. Dr. Chan states that he acquired licenses through two of the Receivership Companies and that one of the companies, Nationwide Digital, had undertaken to construct and operate Dr. Chan's SMR facilities. Because Nationwide does not have the capability to construct the stations in time, Dr. Chan requests a one-year extension so that he can employ other business entities to construct and operate his SMR stations.

17. *Comments.* The FTC supports the Goodman petition on the grounds that an extension of the construction and operation deadline would help to alleviate the financial injury suffered by the 4,000 licensees. Licensees would directly benefit by a rule waiver, the FTC contends, because it would give the Receiver adequate time to negotiate arrangements with legitimate SMR operators to manage and/or construct the stations. The FTC further argues that these arrangements would indirectly benefit other investors who have been defrauded by the Receivership Companies because reducing the licensees' damages will preserve the assets of the Receivership Companies as a source of redress for other claims.

18. Many individual licensees have submitted comments in support of the Goodman petition. These commenters echo Goodman's argument that an extension of time is necessary to allow construction of their SMR stations because of the delay engendered by the Receivership Companies' fraudulent scheme.

19. Petition opponents argue that extending the construction and operation deadline is an inappropriate remedy for licensees who made speculative and ill-advised investments. The purpose of the waiver request, opponents contend, is not to promote development of SMR service, but to

protect the interests of a group of licensees who hope to make a profit from selling their licenses to established operators. Opponents assert that the Commission cannot act as the guarantor of the public's investment decisions. Opponents also argue that licensees are charged with knowing and fulfilling the responsibilities of holding a license. If these licensees were in fact victims of fraud, opponents argue, they have legal remedies other than an extension of the construction and operation deadline. Opponents assert that the Commission would better serve the public interest by allowing these licenses to lapse so that the Commission can relicense these frequencies directly to legitimate operators.

20. *Decision.* To obtain a waiver of our construction requirements, petitioners must demonstrate that their circumstances are unique, that there is no reasonable alternative solution within existing rules, and that good cause exists to justify the requested relief. The thrust of petitioners' argument is that they should be excused from the eight-month construction requirement because they were the victims of fraud by the Receivership Companies. As discussed more fully below, we will waive our rules to the extent necessary to put petitioners in the same posture as other part 90 CMRS providers now subject to a twelve-month construction period under our rules. Specifically, we will grant petitioners a four-month extension from the effective date of this Memorandum Opinion and Order to construct and commence operations. A four-month extension augments petitioners' original eight-month construction period to the degree necessary to give them the twelve months to build their systems that we allowed for all Part 90 CMRS licensees in the Third Report and Order in General Docket No. 93–252. We emphasize, however, that all other requirements in our rules continue to apply. In particular, as licensees on General Category channels, petitioners do not earn exclusive use of their channels unless they have achieved loading of 70 mobiles per channel. To the extent that petitioners have less than 70 mobiles operating on each of their channels, additional licensees may be licensed to use those channels. We believe our decision to grant petitioners limited relief in this manner in no way undermines our commitment to strict enforcement of our construction rules, which are intended to promote efficient use of SMR spectrum and the availability of service to the public.

21. Since the inception of the SMR service, our rules have required licensees to comply with strict time limits for constructing and loading their systems. These limits were viewed as essential to ensuring that SMR spectrum would be used efficiently, and to promote the rapid deployment of services to the public. We have enforced these rules strictly in order to recover unused spectrum for relicensing. We have particularly noted the importance of enforcing our construction requirements with respect to the General Category channels, on which the petitioners are licensed. In this regard, we have stated our intent ''to aggressively enforce Section 90.633 of our Rules requiring that conventional 800 MHz systems be placed in operation eight months after the date of the grant of the license for the system.''

22. Our policy of strict enforcement of our construction requirements has led us to deny extensions in a wide variety of circumstances in which the failure of SMR licensees to comply with our construction or loading requirements resulted from circumstances that were the result of the licensees' own business decisions or of risks commonly assumed by all licensees. For example, in P & R Temmer, an SMR licensee sought an extension of our construction and loading requirements because it had been required to change its transmitter site to eliminate technical problems and because of the equipment manufacturer's alleged reluctance to aggressively market the system to potential customers. In denying the waiver, we concluded that problems with site selection and marketing strategy were not beyond the licensee's control because they resulted from independent business judgments made by the licensee. We have applied this standard in other circumstances as well, denying extension requests by SMR licensees who have been delayed by such factors as interference from adjacent buildings, zoning difficulties, inability to obtain construction permits, and equipment delivery problems.

23. In this respect, the facts of the present case bear a strong resemblance to the facts in Robert A. Baker, Receiver, a case involving individuals who were solicited by a company to prepare and file cellular applications on their behalf. Shortly before the filing deadline, the FTC brought a fraud action against the company and the court appointed a receiver to assist the victims of the alleged fraud. The receiver sought waiver of the deadline to enable the affected parties to submit applications and the request was supported by the FTC. In a decision affirmed by the Commission, the Common Carrier Bureau denied the waiver request. The Bureau concluded that the individual applicants were responsible for the consequences of their decision to use a mass application preparer, and that there was no evidence of compelling circumstances that would justify waiver of the filing deadline. If the applicants had been defrauded, the Bureau further stated, the appropriate remedy was to seek indemnification from the party that had committed the fraud, not belated insertion into the lottery. The Bureau concluded that the ''tribulations of a mass application preparer cannot excuse the individual applicants from their responsibilities.''

24. We also conclude that the principles set forth in Baker are relevant here. Each individual licensee who hired the Receivership Companies bears responsibility for the decision to rely on a third party to act on his or her behalf in meeting the obligations imposed by the Commission's rules. Assuming that these licensees were defrauded by the Receivership Companies, they have recourse to other legal remedies specifically designed to provide redress. The Commission's mandate, however, is to allocate and assign radio spectrum to serve the public interest.

25. Our decision to grant the petitions in part is motivated by our determination that granting the waiver is equitable in light of the fact that during the pendency of the Goodman and Chan requests, we changed our construction requirements for SMRs licensed in the General Category and all CMRS providers licensed under part 90 of our rules. In the Third Report and Order in the CMRS docket, we adopted a uniform twelve-month construction period for all CMRS providers licensed under part 90 of our rules. We indicated that such a rule change would eliminate the obvious disparity between Part 90 and Part 22 and would further the goal of comparable regulation for all substantially similar services. Recently, on grounds similar to our decision here, the Private Radio Bureau granted 220 MHz non-nationwide licensees a four-month extension to construct their stations. Petitioners and future applicants should not interpret our decision today as a sign of any diminution of our resolve to enforce the twelve-month construction period that applies to General Category and other part 90 CMRS licensees. Like the licensees in Baker, petitioners are fully responsible for the consequences of their decision to use a mass application preparer.

26. We nonetheless find that the request at hand are distinguishable from Baker and other cases in which we denied construction time extensions on

the grounds that we changed our rules while the Goodman and Chan petitions were pending before us. In the interests of fairness, we will grant petitioners the relief necessary to place them in the same posture as other SMR licensees that are subject to a twelve-month rule. We will not, however, permit petitioners who have not achieved loading of 70 mobiles to treat their channels as exclusive. Such relief was not requested and, indeed, was deemed by the Receiver to be unnecessary.

27. We are granting petitioners only limited relief, and for the reasons stated above. To grant this relief for the reasons stated by the petitioners would undermine the objectives of our construction requirements. As we have noted on numerous occasions, the purpose of the prohibition against assignment or transfer of unconstructed licenses is to deter speculation and trafficking in licenses. Even if we assume that many of the licensees at issue here were unaware of or misinformed about this rule, as appears likely, petitioners do not dispute that these licensees were primarily interested in acquiring SMR licenses as a form of investment that they could subsequently sell for a profit. We believe it would be incongruous to grant waivers to licensees on this basis when we have consistently denied them to licensees who had a bona fide intent to construct and operate SMR systems but were unable to construct because of adverse business decisions. The Commission has previously noted that frequencies in the 800 MHz band are extremely scarce in many areas, making it difficult for applicants to obtain channels. Moreover, the licenses at issue here are for General Category frequencies, which may be licensed not only to SMR operators but also to public safety entities and other categories of private radio users.

28. We also want to be clear that by granting limited relief for the reasons stated, we do not intend to reward and encourage further speculative activity by entities like the Receivership Companies and possibly invite abuse of the Commission's processes. The problem of application mills is one that we have encountered and continue to encounter in a number of services. If we were to grant a waiver on the grounds that such action was needed to afford relief to the unwitting victims of a few such companies, the result almost inevitably would be to encourage numerous similar requests. Furthermore, we would be compelled in each case to ascertain whether the licensee in fact was a victim of fraud or was claiming fraud as a pretext.

Finally, the grant of a waiver for the reasons stated by petitioners could inadvertently become a tool used by the application mills themselves in their solicitation of new clients, resulting in more unsuitable applicants seeking Commission licenses. We do, however, affirm our commitment to pursue ongoing initiatives and explore new ways to deter the practices of application mills and alert the public regarding licensing fraud.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22946 Filed 8–26–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[NHTSA–98–4342]

RIN 2127–AH25

Air Bag On-Off Switches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule: response to petitions for reconsideration.

SUMMARY: This document responds to the petitions for reconsideration and letters seeking non-rulemaking action that NHTSA received in response to its final rule exempting motor vehicle dealers and repair businesses from the statutory prohibition against making Federally-required safety equipment inoperative so that they could install air bag on-off switches for vehicles owned or operated by individuals within discrete risk groups. This document denies the petitions for reconsideration. NHTSA will, however, change its current policy with regard to one of the three issues raised in the letters seeking agency action not requiring a rulemaking procedure.

FOR FURTHER INFORMATION CONTACT: For information about air bag on-off switches and related rulemaking, call the NHTSA Hotline at 1–800–424–9393; in the D.C. area, call 202–366–0123. In addition, visit the NHTSA Web site at http://www.nhtsa.dot.gov/airbags/. Among the available materials are descriptions of the procedures for requesting authorization to obtain an on-off switch and a list of questions and answers about air bags and on-off switches. There are also crash videos showing what happens in a crash to a belted, short-statured dummy whose driver air bag is turned off.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 18, 1997, the National Highway Traffic Safety Administration, Department of Transportation, issued a final rule which allows for the installation of air bag on-off switches under limited conditions. (62 FR 62406) Effective January 19, 1998, the rule exempts motor vehicle dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that they may install, subject to certain conditions, retrofit manual on-off switches for the air bags of vehicle owners whose request is authorized by NHTSA. To obtain such authorization, vehicle owners must submit a request form to NHTSA on which they have certified that they have read an agency information brochure about air bag benefits and risks and that they or a user of their vehicle is a member of one of the risk groups specified by the agency. The agency began processing and granting requests December 18, 1997.

NHTSA received 20 petitions for reconsideration of the final rule. Sixteen of these petitions are from members of the general public, and the other four are from organizations. The content of two of the organizational petitions, those from the National Motorists Association and the National Motorists Association, New Jersey Chapter, is very similar to that of the petitions from the general public. Accordingly, they are discussed together with the general public petitions. All other organizational petitions are addressed separately. NHTSA also received two letters that were characterized as petitions for reconsideration but which did not seek any rulemaking action from the agency. Each of the letters are addressed separately.

II. Letter From National Association of Independent Insurers

In the preamble to the Final Rule, NHTSA stated that it would continue to

authorize deactivation of air bags under very limited circumstances when an on-off switch was not available for a given vehicle make and model. NHTSA stated that it would publish the vehicle identification numbers (VIN) of vehicles whose air bags have been deactivated pursuant to an agency letter permitting such action. The agency indicated that it would take this action out of concern about the impermanence of labels alerting the occupants of a vehicle that one or both of its air bags had been deactivated. The agency did not, however, state where this list would be kept or how often it would be updated.

The National Association of Independent Insurers (NAII) submitted a document that was described as a petition for reconsideration and that asked NHTSA to clarify the manner of VIN publication, to publish the VINs of vehicles with on-off switches, and to make available to insurers the names of the owners of vehicles with on-off switches or deactivated air bags.[1] Since the actions requested by NAII are not rulemaking actions, the agency is treating the document as a letter instead of a petition for reconsideration. NHTSA is taking some of the actions requested by NAII, but declines to take the remaining actions.

The agency agrees that it is desirable to advise the public where it can find out whether a particular vehicle has deactivated air bags as well as how often such information will be updated. The list of VINs for vehicles known by the agency to have had one or both of their air bags deactivated will be located at the NHTSA web site (http://www.nhtsa.dot.gov) and will be updated weekly. NHTSA cautions that this list will be incomplete. The vast majority of agency letters sent to date granting permission for deactivation were sent prior to issuance of the final rule. Prior to that time, the agency did not require persons requesting permission for deactivation to provide the VIN of their vehicle. NHTSA has sent new letters asking the recipients of those pre-final rule deactivation permission letters to provide the VIN of any vehicle that has had one or both of its air bags deactivated pursuant to the permission letter and to indicate which air bag was deactivated. The percentage of these letters for which the agency receives responses will depend upon the good will of each individual owner receiving the request, since NHTSA cannot legally compel a response.

[1] NAII maintained that they need the names of switch applicants because VINs are often incorrectly transcribed.

NHTSA has decided against making the VINs for vehicles with on-off switches available to the public as general information. NHTSA does not believe that any interest is served by making such a list available. The regulatory text requires that on-off switch telltales be clearly visible to the front seat occupants. Accordingly, a quick vehicle inspection should alert any interested party to the presence of an on-off switch. While insurers may not regularly inspect the vehicles that they insure, as NAII asserted, insurers can require applicants or policyholders to state whether they have an on-off switch before the policy is issued or renewed. At that time, the insurer can decide whether to provide a discount for the air bag. NHTSA notes that for those individuals who are at heightened risk from a deploying air bag, the safety benefits contemplated by insurers in providing an air bag discount may not apply.

NHTSA will not provide insurers or any other members of the public with information identifying the owner of any vehicles listed on its web site. NHTSA believes that revealing such information would be a violation of the Privacy Act (5 U.S.C. section 552a). Accordingly, NAII's request that they be allowed to verify the ownership of vehicles is declined.

III. Letter From National Association of Pediatric Nurse Associates and Practitioners, Inc.

Under the final rule, NHTSA continues to grant requests for air bag deactivation for vehicles where the vehicle manufacturer has not produced an on-off switch. The criteria for deactivation, however, are stricter than the criteria for installation of an on-off switch since deactivation is a permanent measure that cannot be easily reversed. For example, the deactivation criteria are stricter than their on-off switch counterpart in requiring that medical conditions be documented by a physician and that the physician state that the risk of deployment outweighs the risk of potentially impacting the steering wheel or dashboard.

The National Association of Pediatric Nurse Associates and Practitioners asks NHTSA to allow pediatric nurse practitioners to recommend air bag deactivation if such deactivation is in the best interests of their patient. Since the criteria governing deactivation were not part of the regulation adopted in the final rule, NHTSA has treated the Association's ''petition'' as a simple request for a policy change.

NHTSA recognizes that pediatric nurse practitioners serve an important role in the medical community, particularly in medically under-served areas, where they may provide the majority of medical care for their patients. NHTSA also believes that nurse practitioners are qualified to determine whether a child's medical condition warrants riding in the front seat. Accordingly, NHTSA believes the Association's request is reasonable and has decided to accept medical documentation from pediatric nurse practitioners.

IV. Petition From Mitsubishi Motors R&D of America

Mitsubishi Motors filed a petition for reconsideration seeking to have NHTSA's approval of a request for an on-off switch or deactivation conditioned on a guarantee by the owner that he or she will have the switch removed or the air bag reconnected prior to selling the vehicle. Mitsubishi contends that this is the only way to ensure that only those individuals within one of the specified risk groups loses the potential benefits of the air bag.

NHTSA is denying Mitsubishi's request because even if the agency amended the final rule to condition its approval of owner requests for an on-off switch upon the owner's promising to remove the switch, the agency could not enforce such a promise.

NHTSA can place limitations on the circumstances in which dealers and repair businesses are exempted from the make inoperable prohibition. Indeed, in the final rule, the agency specified that it would not approve switch requests unless the requestor provided certain information and made certain statements. For example, it specified that the requesters must certify that they had read the agency's information brochure and that they or a user of their vehicle is a member of one of the identified risk groups.

However, the agency cannot condition its approval of requests upon the subsequent restoration of the air bags to their original condition prior to resale. The most it could do would be to condition its approval upon the receipt of a promise to make such restoration. Since such a promise could not realistically be enforced against the vehicle owner and would not serve as a limitation on the exempted dealers or repair businesses, the only covered entities under the applicable statute, there would be no assurance that requiring such a promise would ultimately lead to the restoration of the air bags to their original condition.

NHTSA believes the final rule, as drafted, provides adequate notice of the presence of an on-off switch. The required telltale must be illuminated and visible to the driver when the driver-side air bag is turned off and to all front seat occupants when the passenger-side air bag is turned off. NHTSA does not believe there will be a significant amount of misuse in the secondary market, although it acknowledges that nothing in the final rule would preclude an individual who is not at risk from a deploying air bag from purchasing a used vehicle that has a switch and then turning the air bag off.

V. Petition From the American Car Rental Association

In the final rule permitting vehicle owners to apply to the agency for permission to have an on-off switch installed by a dealer or repair business, NHTSA did not differentiate between owners of individual vehicles and owners of vehicle fleets.

The American Car Rental Association (ACRA) has asked NHTSA to modify its final rule to prohibit short-term car rental companies from having on-off switches installed in the vehicles in their rental fleets. ACRA states that it cannot ensure that individuals who are not at risk from a deploying air bag will not misuse an on-off switch. NHTSA is denying ACRA's petition because it believes that a rental fleet owner should be able, if it so wishes, to obtain permission to have on-off switches installed in at least some of its vehicles. It would be reasonable for a fleet owner to make such a request if it believes that a sufficient percentage of its rental population falls within the specified risk groups.

The agency emphasizes that under the final rule, no vehicle owner, whether a company or an individual, is required to have an on-off switch installed. Each decision by a vehicle owner to request permission to have a switch installed should only be made after a careful consideration of the risks involved in having an air bag unavailable in the event of a crash. If rental car companies believe that it would not be appropriate to have vehicles with on-off switches available for their customers who are at risk from an air bag, then they can decide not to request permission for their installation. Alternatively, if they decide that they want to provide at-risk individuals with a vehicle with an on-off switch, then they may decide that it is worthwhile to request a switch for some portion of their fleet.[2] In either case, NHTSA believes this is a decision that can only be reached by the rental companies. NHTSA continues to believe that traditional contract remedies and business relationships will allow for adequate policing of on-off switch use. This is why NHTSA did not exclude leased vehicles or fleet vehicles from the on-off switch rule.

VI. Petitions From Members of the General Public

NHTSA received 16 petitions from members of the general public as well as a petition from the National Motorists Association and the New Jersey chapter of the National Motorists Association. All of these petitions raised the same issues and will accordingly be responded to together. While 28 separate issues were raised in these petitions, many of the issues can be grouped together and have been so grouped here.

Membership in a Risk Group

The petitioners claim that the Government ignored the safety of individuals at risk from air bags, notably children and short-statured females, by creating discrete risk groups that would be eligible for on-off switches rather than allowing deactivation on demand. NHTSA disagrees.

NHTSA believes its final rule appropriately responded to the risk that passenger-side air bags can pose to children. The final rule allows anyone who needs to carry children in the front seat to apply for and receive an on-off switch. Thus, petitioners' contention that the final rule places children at risk is incorrect. Even individuals who only occasionally must drive with children in the front seat can obtain permission for a switch.

Petitioners imply that it is only the air bag which makes the front seat dangerous for children. NHTSA notes that it is preferable to have children sit in the back seat whenever possible since crash data demonstrate that is the safest location, regardless of whether the vehicle is equipped with an air bag. While a significant number of people still choose to allow their children to sit in the front seat, most do so by choice, not necessity.[3]

Likewise, the agency disagrees with petitioners' contention that switches or deactivation on demand should be allowed because children are often improperly restrained. Allowing deactivation on demand would be inappropriate because it would allow people who are not at risk to obtain and use switches to turn off their air bags, thus decreasing their safety. The approach adopted by the agency makes it necessary for vehicle owners to focus on and evaluate the factors that create risk and encourages them to take steps to reduce that risk. The final rule helps to prevent air bag fatalities involving children since the rule allows an on-off switch for anyone who must carry children in the front seat. However, allowing widespread deactivation, apart from not adding any additional safety benefit, could send the conflicting message that children do not need to be restrained as long as they are not in front of an air bag. Further, as noted above, encouraging front seat use would reduce child safety since, even in the absence of an air bag, the front seat is significantly less safe than the back seat.

Petitioners' contention that air bags will cause unreported deaths because short-statured individuals will be unable to control their vehicles after moving their seats back to obtain ten inches is also apparently based on a misreading of the final rule. NHTSA stated that most individuals can achieve the desired ten-inch distance by slightly modifying their driving posture, and still maintain a safe, comfortable driving position. For those individuals who cannot comfortably drive ten inches or more from their air bag, NHTSA recommends they consider having an on-off switch installed.

Contrary to petitioners' contention, NHTSA believes that vehicle owners will carefully read the agency's information brochure and then carefully assess whether they or any user of their vehicle is really at risk from the vehicle's air bags. The agency expects that the owners who request permission for an on-off switch will be people who can legitimately certify membership in a risk group. Anyone who must transport children in the front seat is eligible for an on-off switch. Likewise, people who suffer from a medical condition which they believe places them at risk from a deploying air bag, or people who are unable to get 10 inches or more from the air bag cover, regardless of their height, are eligible for an on-off switch.

NHTSA fully considered allowing persons to deactivate their air bags without having to show or claim actual risk. The agency decided that public safety interests dictate that individuals who do not fall within one of the specified risk groups should not be

[2] NHTSA encourages rental companies to provide information to renters of such vehicles with on-off switches so they understand the circumstances under which it would be appropriate to use the switch. Rental companies could choose to provide renters with a copy of the NHTSA publication Air Bags and On-Off Switches, Information for an Informed Decision.

[3] Cf., Jack Edwards, Kaye Sullivan, ''Where Are All the Children Seated and When Are They Restrained?'', SAE Technical Paper 971550 (1997).

allowed to have an on-off switch installed. Particularly given the evidence of misperception of risk by a significant number of vehicle owners, NHTSA does not believe that an individual's belief that he or she has the right to choose whether to have an air bag outweighs society's interest in avoiding death and serious injury and the enormous public expense associated with unnecessary injury.

Risk of Injury and Death

Petitioners claim that NHTSA's regulatory evaluation indicates that 30 percent of individuals impacted by air bags will receive an injury so that the other 70 percent of that population will avoid injury. Petitioners aver that this level of injury is excessive. The agency believes that the significance of this level of injury cannot be properly assessed in a vacuum. The alternative of what would happen to a vehicle occupant in the absence of an air bag must be considered. In moderate to severe crashes, even belted occupants, especially drivers, will strike their head, neck and chest against the interior of their vehicle in the absence of an air bag. Consequently, the injuries prevented by air bags are typically substantially more serious than the injuries that air bags cause. Further, petitioners do not take into consideration the significant reduction in fatalities which are not represented in the table cited by petitioners.

Contrary to petitioners' assertion, the Government is not mandating that the American public accept a 4 percent risk of death by requiring air bags on all new vehicles. The risk of death cannot be based on a comparison of lives saved versus lives lost. The evaluation of risk must be based on a comparison of total deployments (over 2.1 million) versus lives lost. This risk is less than 0.005 percent. Moreover, for those persons for whom the risk is relatively high, the rule allows the installation of an on-off switch.

The comparison of lives saved to lives lost is instructive. The most recent data (June 1, 1998) indicate that while 105 persons have been killed by air bags, 3,148 persons have been saved. Therefore, a person is 31 times more likely to be saved by an air bag than killed by an air bag. Further, the ratio could be even higher in the future since the 31:1 ratio is based on there being no change in occupant behavior or improvements in air bag design due to NHTSA's Final Rule allowing depowered air bags (62 FR 12960). The vast majority of the 105 air bag deaths could have been prevented through simple behavior modification, namely wearing a safety belt and moving the children to the back seat. NHTSA does recognize that not all risk can be eliminated through behavioral changes since there may occasionally be factors beyond the driver's control. In those instances, NHTSA allows the installation of an on-off switch.

NHTSA's estimates of air bag effectiveness were based on two separate analyses. The first was developed by comparing fatality rates of drivers with air bags to passengers without air bags in the same vehicle. These rates were compared to those of older vehicles of the same make and model without driver or passenger air bags. This approach is called ''double pair comparison analysis'' and is widely used in effectiveness evaluations. The second analysis, which also used double pair comparison methodology, involved comparing fatality rates of frontal and non-frontal impacts of air bag vehicles to non-air bag vehicles. Both methods produced similar results. Neither of the methods took the occupant's safety belt use into consideration (i.e., the estimates were based on the experience of all occupants, regardless of whether they used safety belts). Thus, possible errors in the reporting of safety belt use would have had no effect on these estimates. Regarding the suggestion by petitioners that air bags might provide a net negative benefit for major population groups, these groups are the ones that are specifically allowed to install on-off switches. Persons outside these groups are statistically safer with air bags than without them.

Costs Associated With the Final Rule

Petitioners state that NHTSA has grossly underestimated the cost of on-off switches in evaluating the actual cost of installation, in evaluating the time value of the consumer, and in determining the overall cost based on the number of people who will have a switch installed. Cost was not the deciding factor in issuing the final rule. Safety was the paramount concern in the decision-making process.

NHTSA notes that it lacks the authority to control the amount that dealers and repair businesses charge to install an on-off switch. However, since installation is a purely voluntary expense, each individual can decide whether he or she believes the risk of deployment justifies the accompanying expense. Finally, regardless of the amount charged to consumers, NHTSA continues to believe that a simple on-off switch could be installed for $38 to $63 based on the amount of work required to install the device and the hardware necessary to create a device.

Petitioners contend that the hourly rate of $9.20, the figure that NHTSA used to place a value on the time members of the public who read the brochure and complete the form, should be higher since owners of air bag-equipped vehicles are wealthier than the average American. NHTSA's figure was based on guidance developed by the Department of Transportation for valuing travel time when evaluating regulatory alternatives. The figure is based on a combination of personal or leisure time and time spent at work and represents the wage scale of a wide variety of employees. NHTSA notes that most people would not need to take off work to read the information brochure and fill out the form. Accordingly, the figure of $9.20 may be slightly higher than the true value of the time that an individual would spend for those purposes. Nevertheless, NHTSA believes an hourly rate of $9.20 is reasonable.

As to the overall cost of the final rule, NHTSA believes that the overall costs are irrelevant to an individual's decision to request permission for and purchase a switch. Individuals either will or will not install an on-off switch, regardless of the final rule's cost to the entire population.

NHTSA's estimate of 80,000 installations per year represented its best estimate as of the time the rule was issued. Current demand for on-off switch authorizations has averaged 189 requests per day. If demand were to remain constant throughout the year, actual demand would be approximately 69,000 installation requests per year. However, NHTSA does not believe that demand will continue at current rates. The issuance of the final rule is still a fairly recent event, having become effective on January 19, 1998. Significant media coverage accompanied both the issuance of the final rule and its implementation. Further, it was natural that there be an initial surge in requests since the majority of individuals who are concerned with deploying air bags were likely to request a switch as soon as the option became available. As time passes and the issuance and media coverage become more distant events, NHTSA believes that demand will also fall. The agency anticipates that future requests will tend to be limited to individuals either buying a new vehicle or having an additional child who cannot be accommodated in the back seat.

Misuse

Petitioner claims that NHTSA's statement in its final rule that it has not seen, and does not expect, a significant

amount of misuse is a tacit acknowledgment by the agency that it has no reasonable basis for requiring membership in a risk group.

Petitioner mischaracterizes the issue. The agency's position on misuse is that past experience indicates some relaxation of its previous limitations on on-off switches is justified, not that switch misuse is not a potential problem under any circumstances.

As an initial matter, any deactivation, or switching off, of an air bag by or for an individual who does not fall within the specified risk groups constitutes misuse. That individual is safer with an air bag than without one. Accordingly, allowing all members of the general public to have on-off switches installed, regardless of risk, can only increase the potential for misuse.

Additionally, NHTSA allowed broader criteria for retrofit switches than for switches installed prior to first sale in certain vehicles based in part on its experience with those switches. Prior to the publication of the final rule at issue here, on-off switches were limited to the passenger side of vehicles with no back seat or a back seat that could not accommodate a child restraint (OEM rule) (49 CFR 571.208 S4.5.4). Under that rule, potential misuse is limited to adult passengers since no switch is available for the driver side air bag and all children under age 12 fall within a risk group prescribed by the retrofit final rule.

NHTSA is unaware of any circumstances in which an adult passenger has been killed or seriously injured in one of these vehicles because the air bag had been switched off, although it does know of an infant fatality where the passenger-side air bag had been left on. This apparent lack of significant misuse in a limited portion of the overall air bag-equipped fleet persuaded NHTSA that some relaxation of the existing requirements, when accompanied by a process designed to inform vehicle owners of actual risk, was justified.

The agency notes that under the OEM rule, all switch-eligible vehicles have either no back seat or only a small seating area. Accordingly, children in most of these vehicles have no choice but to sit in the front seat. As NHTSA has repeatedly cautioned, the back seat is safest for all passengers and particularly for small children. NHTSA remains concerned that allowing switches for individuals who do not meet one of the specified criteria only increases the possibility that children who could more safely ride in the back seat will be placed in greater danger simply because the passenger-side air bag has been turned off.

The Agency's Evaluation of Comments

Petitioners contend that NHTSA failed to take into account the comments from some 600 members of the general public as well as the National Transportation Safety Board and the Insurance Institute for Highway Safety (IIHS). This is incorrect. NHTSA considered all comments in making its decision. However, the agency's decision was based upon safety considerations instead of what appeared from the comments to be the most popular decision.

Further, the final rule may be more popular than suggested by the petitioners. Many of the private citizens who submitted comments on the rulemaking may fall within a specified risk group since the primary complaint was short stature. If these individuals are unable to get at least ten inches from the center of their steering wheel while sitting comfortably, they are eligible for an on-off switch. As to the commenters' attitude toward on-off switches, the degree of their support is uncertain since most commenters did not address on-off switches. Of those who did discuss on-off switches, the majority supported on-off switches as at least an option to deactivation.

Physician's Report

Petitioners claim that the medical panel did not consider two investigations concerning ''air bag exhaust fire'', a newspaper report of an air bag-related fire, and two anecdotal reports of near-asphyxiation from air bags when it reported that a driver's supplemental oxygen did not justify air bag disconnection. NHTSA's Office of Defects Investigation investigated the two reports of ''air bag exhaust fire'' and concluded that there was no indication the air bags in question caused the burns complained of in the consumer complaints to NHTSA. One of the investigations did note that air bag exhaust does reach temperatures high enough to ignite some fabrics, but that the temperatures did not remain at those levels for a sufficient period of time to create a fire hazard (PE97–014). In neither investigation did the vehicle owner claim that sparks or flames were emitted from the air bag. In any event, if an individual's treating physician believes that supplemental oxygen is a concern, regardless of the analysis reached by the medical panel, the patient is able to obtain an on-off switch under the final rule's criteria.

Petitioners' claim regarding potential diminution in quality of life from air bag injuries does not justify allowing deactivation on demand. Particular concern was raised about potential hearing and vision loss. Injury patterns culled from the National Analysis Sampling System (NASS), as well as all available medical literature, including the University of Michigan report cited by petitioners, were reviewed by the medical panel. None of the available data or literature revealed significant injury to the eyes or hearing loss as a result of air bag deployments.

The medical panel considered all known literature on hearing and vision loss related to air bag deployments. It stated that potential loss of hearing could not be isolated to air bag deployment and that the air bag was no more likely to cause a serious eye injury than impacting the dashboard or steering wheel. Even if these types of injuries were occurring on a regular basis, like arm injuries, the level of injury is incremental and significantly less than the types of injuries which air bags are preventing. The vast majority of injuries caused by air bags are both minor and temporary.[4]

Petitioners' claimed that air bags should be voluntary because individuals are allowed to withhold consent for all other forms of medical treatment. This comment raises issues not only beyond the scope of this rulemaking, but beyond the agency's authority given the statutory mandate for air bags. Nevertheless, the agency notes that air bags are a preventative measure similar to many medical therapies which significantly impact public health. Thus, children are required to be vaccinated before they can enter school, municipalities are required to provide a safe source of drinking water, and the American food supply is subjected to stringent controls to protect the public health.

Deactivation

In the preamble to the final rule, NHTSA stated that it would continue to grant requests for permanent deactivation when no vehicle manufacturer switch is available and when the applicant meets certain criteria. These criteria are more limited than those for which a switch is authorized. The agency notes that the final rule allows the installation of non-vehicle manufacturer switches and that such switches are available. Petitioner claims that NHTSA's policy places individuals at undue risk, alleging vehicle manufacturers may decide not to manufacture switches for all vehicle

[4] NASS analysis did reveal a substantial increase in arm injuries as a result of air bag deployment.

makes and models, and that deactivation is cheaper than switches.

NHTSA's decision to impose more stringent criteria on air bag deactivation is reasonable, given the permanent nature of deactivation. Deactivation renders an air bag unavailable to help anyone in a crash. In contrast, the on-off switch allows a driver to turn the air bag on or off, depending on the risk faced by the individual seated in front of the air bag. This flexibility is important in the case of a vehicle whose users include a mix of people at risk and people not at risk. For example, one member of a couple may have a medical condition which prevents him or her from achieving a 10-inch distance from the air bag, while the other can achieve that distance. Likewise, a family may only have to transport children in the front seat on rare instances, such as when they have to transport a neighbor's child and they have insufficient room in the back seat for all of the children. The presence of an on-off switch would make that air bag available to every individual who is not at risk while the air bag could be turned off for those at risk. In contrast, deactivation renders an air bag unavailable to everyone, regardless of risk.

While deactivation may be cheaper than an on-off switch, cost was not the agency's main consideration. Safety was the overriding factor. Further, since the cost of both deactivation and on-off switches is ultimately market-based, NHTSA cannot assess the differences in cost with any specificity. NHTSA believes that its estimation of on-off switch cost should not be an overwhelming deterrent to anyone who needs a switch. Cost concerns aside, one is significantly more likely to find a company willing to install an on-off switch than deactivate an air bag. Liability concerns on the part of dealers and repair businesses have rendered permanent deactivation more difficult to get performed than installation of a switch. As for petitioner's claim that deactivation more certainly turns off an air bag than an on-off switch does, manufacturers, dealers and repair businesses have every incentive to produce and install a safe switch since the final rule does not waive civil liability for defective switches or negligent installation.

Further, the agency notes that there are potential risks associated with deactivation. Labels can be removed, either purposely or inadvertently. An occupant expecting air bag protection may unexpectedly find that he or she has none in a crash. Many deactivated air bags will likely not be reactivated prior to resale since there is no incentive to reactivate, and since NHTSA does not have the authority to require reactivation. Consequently, any decision to reactivate, as well as to inform a potential secondary purchaser of the air bag's inoperable status, will depend entirely on the good will of the vehicle's owner.

Depowered and Advanced Air Bag Systems

Petitioners argued that deactivation or on-off switches should remain available to owners of vehicles with depowered air bags and advanced air bags. Under the final rule, on-off switches will be available for vehicles with depowered air bags. As the agency stated in the final rule:

> As to depowered air bags, NHTSA anticipates that they will pose less of a risk of serious air bag injuries than current air bags. However, the agency will wait and accumulate data on depowered air bags before making a final decision on this issue. The agency may revisit this issue in a future rulemaking if data indicate that cutoff switches are not appropriate in vehicles with depowered air bags. For the present, the exemption will apply to vehicles with depowered air bags.

As to advanced air bags, NHTSA did not decide in the final rule whether retrofit on-off switches would be permitted for vehicles with those air bags. The agency did say that it continued to believe, based on safety considerations, that it should prohibit dealers and repair businesses from retrofitting advanced air bag vehicles with cutoff switches. However, since advanced air bags were not expected for several years, there was no immediate need to make a decision. The agency said that it would address this issue in its proposal on advanced air bags.

Process for Receiving Authorization To Have an On-Off Switch Installed

Petitioners argued that the actual number of eligible individuals who will be able to have an on-off switch installed is too low because of the authorization process established by the agency. The agency disagrees. NHTSA defined the eligible risk groups to avoid the need for ad hoc decision making and to expedite the authorization process. The amount of time necessary to read the information brochure and fill out the request form (approximately 30 minutes) is nominal when compared to the significant safety benefit at issue. Likewise, the amount of time required to process a request, currently one or two days, is reasonable, given the benefit that air bags provide to the vast majority of the general public. Further, NHTSA's streamlined process minimizes the amount of time that an at-risk individual must wait before receiving authorization to have an on-off switch installed.

Request for Reconsideration

Based on the foregoing, NHTSA is denying petitioners' request that on-off switches be available on request and without certification of membership in a risk group. As noted above, the risk of serious injury or death is small and the benefit of air bags is large. NHTSA will continue to require vehicle owners to submit the completed on-off switch request forms to the agency for processing. Petitioners' request that the agency allow deactivation on request is likewise denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: August 20, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980818222-8222-01; I.D. 081898A]

RIN 0648–AL61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures and Closure of the Recreational Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule with request for comments and notice of closure.

SUMMARY: This emergency interim rule releases the remaining 1998 recreational and commercial quota reserves for Gulf of Mexico red snapper. In so doing, it supersedes certain provisions of the interim rule that was published in the **Federal Register** on April 14, 1998. In addition, NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico, effective 12:01 a.m., local time, September 30, 1998, through December 31, 1998. The intended effects are to

avoid unnecessary restrictions and associated adverse economic and social impacts, to make the appropriate quotas available to the recreational and commercial sectors consistent with the best available scientific information, and to protect the red snapper resource.

DATES: This rule is effective August 27, 1998 through February 24, 1999. The closure of the recreational fishery for red snapper in the EEZ of the Gulf of Mexico is effective 12:01 a.m., local time, September 30, 1998, through December 31, 1998.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Total Allowable Catch (TAC)

In February 1998, the Council submitted a regulatory amendment to the FMP which proposed to maintain the red snapper TAC at 9.12 million lb (4.14 million kg). The Council based its decision, in part, on an assumed bycatch reduction in mortality of at least 60 percent for juvenile red snapper, phased in over a 3-year period, and updated bycatch reduction device (BRD) performance information which showed that bycatch reduction levels of 59 percent and above were achievable with fisheye BRDs. Previous assumptions involved reduction levels closer to 50 percent based on advice from NMFS gear specialists. At the higher bycatch reduction level, model projections demonstrated that the target 20 percent SPR could be achieved by 2019 while maintaining TAC at 9.12 million lb (4.14 million kg). At the time the Council issued its regulatory amendment, the requirement for BRDs had not been implemented. The requirement for BRDs, however, was implemented May 14, 1998, (63 FR 18139, April 14, 1998).

On April 14, 1998, NMFS published an interim rule (63 FR 18144) which left the 9.12 million-lb (4.14 million-kg) TAC for 1998 unchanged, but held 3.12 million lb (1.42 million kg) in reserve. The reserve was to be released on September 1, 1998, if a research study conducted during the summer of 1998 was able to demonstrate that BRDs could achieve reduction levels above 50 percent. This interim rule was followed by two additional interim rules (63 FR 27499, May 19, 1998 and 63 FR 27485, May 19, 1998). The first of these certified two new BRDs. The second implemented data collection requirements, including mandatory observers, logbooks, and vessel monitoring systems, for the Gulf shrimp fleet.

Under the latter rule, NMFS began a research study to evaluate BRD performance under commercial operational conditions. Preliminary results from the 1998 summer study indicated that juvenile red snapper bycatch in shrimp trawls has been reduced. However, the analyses of these data conducted to date do not warrant release of any of the reserve red snapper TAC in accordance with the interim rule.

However, NMFS believes that adjusted bycatch reduction levels of about 55 percent are achievable within approximately 2 years. Prior BRD test results where the BRDs were installed by gear specialists and the vessel captains were briefed on how to optimize the performance of the BRD resulted in unadjusted reduction levels of 59 to 71 percent for the more commonly used fisheye BRDs. Adjustments for compliance, mortality, and lack of compatible state regulation (based on 1998 study results) would still provide for bycatch reductions at or above 55 percent. BRD compliance levels in Federal waters can be expected to reach about 97 percent within approximately 2 years based on NMFS' experience with improvement in compliance rates for turtle excluder devices. The predation mortality of fisheye and Jones-Davis BRDs was approximately 1.5 and 20 percent, respectively. Even higher reduction levels may be possible, especially if BRD requirements are used in combination with other management measures such as those recommended by the 1997 science and management peer review (fleet or vessel bycatch quotas and/or selected area closures to shrimping).

Effect of National Standard Guidelines

Revised national standard guidelines were published on May 1, 1998 (63 FR 24212), which specifically affect red snapper management in the Gulf of Mexico. In particular, the guidelines call for a change in the definitions of ''overfishing,'' ''overfished,'' ''optimum yield (OY),'' and a change in recovery schedules. Gulf red snapper are considered overfished, but recovering.

While the Gulf Council has not yet specified a revised Maximum Sustainable Yield (MSY), OY, or recovery period for red snapper, according to a letter from the Council Chair dated August 5, 1998, NMFS anticipates that the Council will recommend 30–percent spawning potential ration (SPR) for MSY and the maximum recovery period allowed by the guidelines to prevent unnecessary economic and social hardships on the directed red snapper fisheries and fishing communities in the Gulf of Mexico.

SPR projections modeled by NMFS show that a target SPR level of 30 percent could be achieved within the rebuilding period allowed by the guidelines, if management measures, including BRDs, phase-in a reduction of juvenile red snapper bycatch mortality by 55 percent within 2 years and up to 60 percent during the recovery period. However, landings cannot exceed TAC (9.12 million lb (4.14 million kg)). NMFS encourages the Council to evaluate other management measures to reduce red snapper bycatch, if needed, to reach the bycatch reduction level necessary to maintain the current 9.12 million-lb (4.14 million-kg) TAC.

Release of the 1998 Red Snapper Reserve TAC

NMFS believes that immediate release of the remainder of the 3.12 million-lb (1.42 million-kg) 1998 red snapper reserve TAC is warranted, based on advice from NMFS gear specialists; preliminary results from studies and analyses designed to quantify effects of BRD compliance, BRD release mortalities, and the lack of compatible state BRD regulations; and the revised national standard guidelines. NMFS believes that without this release severe economic and social hardships would occur in the red snapper commercial and recreational fisheries, and in the communities that depend on these fisheries. Potential commercial losses are estimated as a short-term revenue loss of $2.7 million and a profit loss of $1.4 million. The degree to which red snapper anglers will cancel trips or target alternative species in response to closures is not known. Potentially, 27 percent of recreational trips may be canceled. These hardships should be minimized with a release of the remaining TAC reserve.

Therefore, this emergency interim rule supersedes the TAC provisions of the April 14, 1998, interim rule and

releases the remaining recreational quota reserve effective August 27, 1998 and releases the remaining commercial quota reserve of 1.53 million lb (0.69 million kg) effective at noon, local time, on September 1, 1998. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 15th of each month, until the applicable commercial quota is reached, as determined by near real-time monitoring of landings at the dealer level. When the commercial quota is reached or is projected to be reached, notification of the commercial closure will be published in the **Federal Register**.

Closure of the Recreational Red Snapper Fishery

Under 50 CFR 622.43, NMFS is required to close the Gulf red snapper recreational fishery when the available quota is reached, or is projected to be reached. Because of the large number of recreational anglers and the geographical diversity of access sites, the procedures that are used to monitor a quota for recreational fishing are fundamentally different from the procedures used to monitor quotas for commercial fishing. For commercial fishing, the catch is unloaded and recorded as part of the buying/selling transaction, and a physical record is kept of the transaction. In contrast, all catches by recreational anglers cannot be recorded and statistical techniques have to be used to estimate the catches from this sector of the fishery.

For the Gulf of Mexico, three sources of data are used to estimate recreational red snapper landings: NMFS Marine Recreational Fishery Statistical Survey (MRFSS), NMFS Headboat Survey, and the Texas Recreational Fishery Survey. Data from these surveys are used in models to project landings. In 1997, NMFS used a model based on average landings from the previous few years adjusted by data from the current year MRFSS and headboat survey estimates. This model has now been significantly upgraded and expanded to incorporate age structure and recruitment information. NMFS believes that the landing projections based on the upgraded model (length-based simulation model (LSIM)), with some consideration given to current year conditions, represents the best available scientific information for estimating when the red snapper fishery should be closed.

Based on the LSIM model, NMFS projects that the available recreational quota of 4.47 million lb (2.03 million kg) for red snapper will be reached by September 29, 1998. Accordingly, the recreational fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, September 30, 1998, through December 31, 1998. During the closure, the bag and possession limit is zero for all red snapper harvested in or from the EEZ in the Gulf of Mexico, and for all permitted reef fish vessels without regard to where the red snapper were caught.

Compliance With NMFS Guidelines for Emergency Rules

This emergency rule meets NMFS policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

NMFS expects that recovery of red snapper to 30 percent SPR (assumed proxy for MSY) can be achieved within the recovery period allowed by the recently published national standard guidelines at adjusted bycatch reduction levels of 55–60 percent. The current target recovery SPR level is 20 percent by 2019. Additionally, BRD research, coupled with advice from NMFS gear experts, indicates that a 55–60 percent adjusted level of bycatch mortality reduction for juvenile red snapper is a reasonable expectation.

Serious Management Problems in the Fishery

Without this emergency rule, the directed commercial red snapper fishery would not be allowed to open on September 1, 1998, and the recreational fishery would have to be closed immediately in Federal waters. However, these actions appear unnecessary to rebuild the red snapper stock under the revised national standard guidelines. Failure to open the commercial fishery and immediate closure of the recreational fishery would have serious adverse economic impacts on the commercial and recreational fisheries, and the fishing communities they support. Potential commercial losses are estimated as a short-term revenue loss of $2.7 million and a profit loss of $1.4 million. The degree to which red snapper anglers will cancel trips or target alternative species in response to closures is not known. Potentially, 27 percent of recreational trips may be canceled. In addition, early announcement of the recreational closure date will facilitate angler planning.

Immediate Benefits

The immediate benefits of the emergency rule greatly outweigh the value of prior notice and opportunity for public comment, which would occur under normal rulemaking. This rule relieves restrictions on those individuals and fishing communities dependent on the Gulf red snapper fishery in a manner that is consistent with the national standard guidelines, the Magnuson-Stevens Act, and other applicable law.

The NMFS Southeast Fisheries Science Center has determined that this emergency interim rule is based on the best available scientific information.

NMFS finds that the timely regulatory action provided by this emergency interim rule is critical to avoiding unnecessary adverse economic and social impacts on participants and fishing communities dependent on the red snapper fishery in the Gulf of Mexico. NMFS issues this emergency interim rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to make the appropriate quotas of red snapper in the Gulf of Mexico available to the recreational and commercial fisheries and to avoid unnecessary restrictions. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule that is summarized as follows. This emergency rule releases the remainder of the 3.12 million lb (1.42 million kg) of TAC that was previously reserved, thereby increasing both commercial and recreational fishing values. In the case of the commercial fishery, the additional quota reserve released would have been 1.59 million lb (0.72 million kg), but this poundage had to be

decreased by 0.06 million lb (0.03 million kg) because of a slight quota overrun during the initial commercial season. The resulting increase of 1.53 million lb (0.69 million kg) in the commercial quota translates into increased revenues for the 1998 fishing year of $2.7 million and increased profits of $1.4 million. For the recreational fishery, the release of the additional quota reserve means that the recreational fishery will be able to take 34,000 additional red snapper fishing trips in 1998. The increased number of trips will occur because a recreational closure for the period September-December means that 126,000 trips would be foregone, while only 92,000 trips will be foregone when the quota reserve is released and the fishery closed for the shorter October-December period. Although there is not enough information to translate the increased number of trips into increased value in dollar terms, there is no question that there will be increased satisfaction and consumer surplus for private recreational fishermen and increased revenues and profits for charterboat and headboat operators. One way of viewing the change in value is to note that the increase of 34,000 trips for September means that losses would approach 27 percent for the balance of 1998 if the quota reserve was not released. It is noted that the actual loss would be somewhat less than 27 percent because some of the trips would target alternative species.

Copies of the economic evaluation are available (see **ADDRESSES**).

A delay in releasing the available quota reserves, consistent with the best scientific information available, would result in severe and unnecessary adverse impacts on all entities dependent on the red snapper fishery in the Gulf of Mexico, including the recreational and commercial fisheries and the associated fishing communities. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest. Pursuant to 5 U.S.C. 553(d)(1), a delay in the effective date of this rule is unnecessary because this rule relieves restrictions on the regulated participants in this fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 21, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 622.42 [Amended]

2. In § 622.42, the suspension of paragraph (a) is lifted; paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) are further amended by revising the respective references to § 622.34(l) to read § 622.34(m); and paragraph (g) is removed.

[FR Doc. 98–22943 Filed 8–21–98; 4:34 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971107264–8001–02; I.D. 082098A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Directed Fishery for Illex Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Illex* squid in the exclusive economic zone (EEZ) has been harvested. Vessels issued a Federal permit to harvest *Illex* squid may not retain or land more than 5,000 lb (2.27 mt) for the remainder of the fishing year.

DATES: Effective 0001 hours, August 28, 1998, through 2400 hours, December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: Regulations governing the *Illex* squid fishery are found at 50 CFR part 648. The regulations require specifications for initial annual amounts of the initial optimum yield as well as the amounts for allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 1998 specification of DAH for *Illex* squid was set at 19,000 mt (63 FR 1773, January 12, 1998). Section 648.22 requires that when the Regional Administrator, Northeast Region, NMFS, projects that 95 percent of the DAH for *Illex* squid has been attained, the Assistant Administrator for Fisheries, NMFS (AA), shall close the directed fishery in the EEZ. The AA is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Illex* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Acting Regional Administrator has determined, based on vessel and dealer logbook data, that at least 18,050 mt or 95 percent of the DAH for *Illex* squid, has been harvested. Therefore, effective 0001 hours, August 28, 1998, the directed fishery for *Illex* squid is closed. After August 28, 1998, vessels issued Federal permits for *Illex* squid may not retain or land more than 5,000 lb (2.27 mt) per trip for the remainder of the year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23014 Filed 8–24–98; 3:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971229312–7312–01; I.D. 081998B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Fixed Gear Sablefish Mop-Up

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of fixed gear sablefish mop-up fishery; fishing restrictions, request for comments.

SUMMARY: NMFS announces adjustments to the management measures for the Pacific coast groundfish fishery off Washington, Oregon, and California. This action establishes beginning and ending dates and the cumulative period landings limit for the mop-up portion of the limited entry, fixed gear sablefish fishery. These actions are intended to provide for harvest of the remainder of the sablefish available to the 1998 limited entry, fixed gear primary sablefish fishery.

DATES: The fixed gear sablefish mop-up fishery will begin at 1201 hours local time (l.t.), August 28, 1998, and will end at 1200 hours l.t., September 11, 1998, at which time the limited entry daily trip limit fishery resumes. The daily trip limits for the fixed gear sablefish fishery will remain in effect, unless modified, superseded or rescinded, until the effective date of the 1999 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted until September 11, 1998.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, Northwest Region, NMFS, 206–526–6140; or Svein Fougner, Southwest Region, NMFS, 562–980–4000.

SUPPLEMENTARY INFORMATION: The limited entry, fixed gear sablefish fishery consists of a ''primary'' fishery, composed of the ''regular'' fishery described below, during which most of the fixed gear sablefish allocation is taken, and followed by a ''mop-up'' fishery, during which the remainder of the amount available to the primary fishery is taken.

The regulations at 50 CFR 660.323(a)(2) (63 FR 38101, July 15, 1998) established a new season structure for the limited entry, fixed gear primary sablefish fishery in 1998. Participants in the regular season were divided into three tiers based on their historical and more recent participation in the fixed gear sablefish fishery, and each of the three tiers was assigned a different cumulative limit: 52,000 lb (23,587 kg) for Tier 1; 23,500 lb (10,660 kg) for Tier 2; and, 13,500 lb (6,124 kg) for Tier 3. During the regular season, each limited entry permit holder with a sablefish endorsement had the opportunity to fish up to the limit of the tier assigned to his or her permit. Other than the large, tiered cumulative limits, the only trip limit in this fishery was for sablefish smaller than 22 inches (56 cm). The 1998 regular season started at noon on August 1, 1998, and lasted for 6 days, ending at noon on August 7, 1998.

Preseason estimates of the likely total harvest in the regular season fishery were conservative in order to minimize the risk of the fishery exceeding its total allocation. Because of the conservative projections, the regular fishery was not expected to harvest all of the limited entry, fixed gear allocation for north of 36° N. lat. in excess of that required for the daily trip limit fishery. The Regional Administrator is authorized to announce a mop-up fishery for any excess, if it is large enough, about 3 weeks after the end of the regular season and consisting of one cumulative trip limit for each vessel (50 CFR 660.323(a)(2)(v)). Approximately 3 weeks are needed for the Pacific Fishery Management Council (Council) Groundfish Management Team to compile all of the landings receipts from the regular season and to calculate the amount available for the mop-up season, if any.

This document establishes the 1998 mop-up fishery for limited entry, fixed gear permit holders with sablefish endorsements. Only individuals holding limited entry permits with sablefish endorsements may participate in the mop-up fishery. No vessel may land more than one cumulative limit.

The 1998 limited entry nontrawl sablefish allocation is 3,641,999 lb (1,652 mt), of which 3,095,699 lb (1,404.2 mt) is available to the primary limited entry, fixed gear sablefish fishery. The best available information on August 18, 1998, indicated that approximately 2,598,342 lb (1,178.6 mt) of sablefish were landed during the regular season. Therefore, 497,358 lb (225.6 mt) remains available to the mop-up fishery. The Regional Administrator, after consulting with Council representatives via telephone on August 18, 1998, has determined that the mop-up fishery will occur, and that a cumulative trip limit of 3,200 lb (1,452 kg) (round weight) in a 2-week period (August 28 - September 11, 1998) would give limited entry permit holders with sablefish endorsements the opportunity to harvest the remainder of the sablefish available to the primary fishery without exceeding the amount of sablefish set aside for that fishery. The trip limit for sablefish smaller than 22 inches (56 cm) total length, or 15.5 inches (39 cm) for sablefish that are headed, that was in effect during the regular season continues during the mop-up season.

Only limited entry permit holders with sablefish endorsements may participate in the mop-up fishery. No vessel may land more than one cumulative limit. Once a vessel has landed its 3,200 lb (1,452 kg) cumulative limit, it may not land more sablefish until the daily trip limits resume at 1201 hours on September 11, 1998. There is no limited entry, daily trip limit fishery during the mop-up fishery period. Therefore, holders of limited entry permits without sablefish endorsements may not land any sablefish during the mop-up period. Similarly, once a vessel with a sablefish endorsed limited entry permit has been used to land its 3,200 lb (1,452 kg) cumulative trip limit in the mop-up fishery, it may not be used to land more sablefish until the daily trip limits resume. Also, acquiring additional limited entry permits does not entitle a vessel to more than one cumulative limit.

Following the mop-up fishery, daily trip limits are reimposed until the end of the year, or until modified. The sablefish daily trip limit for the limited entry fishery north of 36° N. lat. after the mop-up season is 300 lb (136 kg) per day, with no more than 1,800 lb (816 kg) cumulative per 2-month periods of September-October and November-December. Since the daily trip limits apply to a 24–hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 0001 hours and 1200 hours on August 28, 1998, just before the start of the mop-up season, and between 1201 hours and

2400 hours on September 11, 1998, following the mop-up season.

A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated. If a trip lasts more than 1 day, only one daily trip limit is allowed. Daily trip limits were in effect until the beginning of the regular season, and went back into effect after the post-season closure ended on August 8, 1998. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

NMFS Actions

For the reasons stated above, the 1998 annual management measures (63 FR 419, January 6, 1998) are modified. NMFS announces the dates of the fixed gear sablefish limited entry mop-up fishery and the amounts of sablefish that may be taken with limited entry fixed gear during and after the limited entry mop-up fishery in 1998. All other management provisions remain in effect.

In Section IV., under *B. Limited Entry Fishery*, paragraph (4)(d)(i) is revised to read as follows:

B. Limited Entry Fishery

* * * * *

(4) * * *

* * * * *

(d) * * *

* * * * *

(i) *Mop-Up Season*. The mop-up season will begin at 12 noon (local time) on August 28, 1998, and end at noon on September 11, 1998. The cumulative trip limit for the mop-up fishery is 3,200 lb (1,452 kg). No vessel may be used to take more than one mop-up cumulative trip limit. (Note: The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 3,200 lb (1,452 kg) round weight corresponds to 2,000 lb (907 kg) for dressed sablefish.)

* * * * *

Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. Because of the need for immediate action to start the mop-up fishery for sablefish, and because the public had an opportunity to comment on these actions at the September 1997 through April 1998 Council meetings, NMFS has determined that providing an opportunity for public notice and comment would be impractical, unnecessary, and contrary to public interest. Participants in the primary sablefish fishery are anxious to begin the mop-up fishery. Delay of this rule could push the mop-up season into inclement autumn weather; therefore, the agency believes that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(a)(2), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23012 Filed 8–24–98; 2:48 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 081498D]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels Using Hook-and-Line Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for the hook-and-line groundfish fisheries, (defined at § 679.21(d)(4)(iii)(C)), other than sablefish or demersal shelf rockfish, was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) for the third season, the period September 1, 1998, through December 31, 1998, as 25 mt.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the third seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the third seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the GOA hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish. A delay in the effective date is impracticable and contrary to the public interest. The third seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught. Further delay would only result in exceeding the third seasonal apportionment. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C.

553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 20, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–22948 Filed 8–26–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 63, No. 166

Thursday, August 27, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724 and 1726

RIN 0572–AB42

Electric Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to change the manner in which it publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, engineering services, or architectural services financed through loans made or guaranteed by RUS. The required contract forms are currently published in text format in the Code of Federal Regulations (CFR). This proposed rule would eliminate this unnecessary and burdensome publication in the CFR.

DATES: Comments on the proposed rule must be received by: September 28, 1998.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: (202) 720–9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) exempted RUS loans and loan guarantees from coverage under this order.

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and in accordance with § 212(e) of the department of agriculture Reorganization Act of 1994 (7 USC § 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule have been submitted to OMB for approval. The paperwork contained in this rule will not be effective until approved by OMB.

Send questions or comments regarding any aspect of this collection of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

Unfunded Mandates

This rule contains no Federal mandate (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

Background

RUS proposes to change the manner in which it publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, architectural, or engineering services financed through loans made or guaranteed by RUS.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. See section 5.16 of appendix A to subpart C to part 1718. RUS currently implements these provisions of its loan agreement through parts 1724 and 1726 which generally prescribes when and how borrowers are required to use RUS standard form contracts and identifies the standard contract forms to be used. Title 7 CFR

part 1724 covers engineering and architectural services contract forms, and 7 CFR part 1726 covers construction and procurement contract forms.

The required standard contract forms currently are published in full text format in title 7 of the CFR (see, e.g., §§ 1724.74–1724.76 and § 1726.312–1726.352.) RUS also publishes forms of contracts which serve as guidance to borrowers and which borrowers may use at their discretion. All of these forms are available, in a format suitable for use as a contract, from RUS or the Government Printing Office (GPO), as provided in § 1724.70 and § 1726.300. If an RUS borrower is required by part 1724 or 1726 to use a form of contract, the borrower must use the contract form in that format available from RUS or GPO. RUS believes that the current system of publishing the complete text of the contract forms in the CFR is unnecessary and that, consistent with the agency's objective to streamline regulatory text and to provide borrowers' with a user friendly regulatory system, the complete text of the required contract forms should no longer be published in the CFR.

Rather than publish the complete text of the standard contract forms in the CFR, RUS proposes to identify in § 1724.74 and § 1726.304 all required contract forms by number, issue date, name, purpose, and source. To the extent that RUS may be required to publish its forms of contract pursuant to section 552(a) of the Administrative Procedure Act (APA) (5 U.S.C. 552(a)) or otherwise, such requirement is met by the identification of the standard contract forms in parts 1724 and 1726. Moreover, RUS provides all borrowers with actual notice of the forms of contract they are required to use in contracting. As the proposed rule states in § 1724.73 and § 1726.303, upon initially entering into a loan agreement with RUS, borrowers are provided with copies of contract forms. Thereafter, should RUS promulgate new or revised standard contract form(s), following the procedures discussed below, RUS will revise the list of standard forms as set forth in § 1724.74 or § 1726.304 or both and send the new or revised standard forms to all affected borrowers by regular or electronic mail. Borrowers, as well as the public, can obtain copies of all standard contract forms from RUS or GPO.

In addition to identifying standard forms and eliminating full publication of the text of each standard contract form in the CFR, RUS proposes to clarify the procedures that will be followed when RUS promulgates a new or revised standard contract form. To the extent that RUS is required by section 553 of the APA (5 U.S.C. 553) or otherwise to provide notice in the FR and an opportunity for public comment in promulgating standard contract forms, RUS will publish a FR notice of rulemaking announcing, as appropriate, a revision in, or a proposal to revise the list of standard contract forms set forth in sections 1724.74 or 1726.304 or both. The revision may change the existing list by, for example, identifying a new required contract form or changing the issuance date of a listed form. The supplementary information section of the FR notice will describe the substantive change in the identified standard contract form and may append the standard contract form or relevant portions thereof. As appropriate, the notice will provide an opportunity for interested persons to provide comments. A copy of each such **Federal Register** notice will be sent by regular or electronic mail to all borrowers.

Finally, the proposed rule clarifies certain aspects of the requirement that borrowers use RUS standard forms of contract. Absent a waiver by RUS, borrowers are required to use those standard forms in effect as of the date the borrower issues bid package to bidders. Borrowers can determine the appropriate standard form based on the issuance date of the form as identified by the most recently published list set forth in § 1724.74 and § 1726.304. RUS may waive for good cause, on a case by case basis, the requirement to use RUS standard forms of contracts pursuant to procedures set forth in the regulation. A failure on the part of the borrower to use standard forms of contracts as prescribed in parts 1724 or 1726 is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise. Consistent with the changes discussed above, RUS proposes to amend those sections of existing regulations that currently set forth the full text of contracts for the purpose of deleting such text. Deletion of the full text from the CFR will not affect the requirement that borrowers use the prescribed forms of contracts. The proposed rule also relocates and makes minor revisions to information regarding contractors bonds and interest on overdue accounts.

List of Subjects

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs-energy, Rural areas, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Chapter XVII is proposed to be amended as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

1. The authority citation for 7 CFR part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1724.3 is amended by adding the following definitions in alphabetical order:

§ 1724.3 Definitions.

* * * * *

GPO means Government Printing Office.

* * * * *

RE Act means the Rural Electrification Act of 1936 as amended.

RUS means Rural Utilities Service.

* * * * *

3. Section 1724.10 is added to read as follows:

§ 1724.10 Standard forms of contracts for borrowers.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through E of this part prescribe when and how borrowers are required to use RUS standard forms of contracts for engineering and architectural services. Subpart F of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for engineering and architectural services.

4. Section 1724.70 is revised to read as follows:

§ 1724.70 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contract promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed

by RUS. (See section 5.16 of appendix A to subpart C to part 1718.) This subpart prescribes RUS procedures in promulgating electric program standard contract forms and identifies those forms that borrowers are required to use.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1724.74(c), that borrowers are required to use in accordance with the provisions of this part. In addition, RUS promulgates standard contract forms identified in the List of Guidance Contract Forms contained in § 1724.74(c) that the borrowers may but are not required to use in the planning, design, and construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

5. Section 1724.71 is revised to read as follows:

§ 1724.71 Borrower contractual obligations.

(a) *Loan Agreement.* As a condition of a loan or loan guarantee under the RE Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes called ''listed contract forms'') identified in the List of Required Standard Contract Forms contained in § 1724.74(c) of this part.

(b) *Compliance.* If a borrower is required by this part to use a listed contract form, the borrower shall use the listed contract form in the format available from RUS. The forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so as to indicate the difference from the listed contract form. Electronic reproduction is not acceptable.

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case by case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking a waiver by RUS must provide RUS with a written request explaining the need for the waiver.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in this part is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

6. Section 1724.72 is added to read as follows:

§ 1724.72 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering into a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the address of the borrower as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are published by RUS. Interested parties may obtain the forms from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Stop 1522, Washington DC 20250–1522, telephone number (202) 720–8674. The list of contract forms can be found in § 1724.74(c).

7. Section 1724.73 is added to read as follows:

§ 1724.73 Promulgation of new or revised contract forms.

RUS may, from time to time, undertake to promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1724.74, List of Electric Program Standard Contract Forms. The amendment may change the existing identification of a listed contract form; for example, changing the issuance date of a listed contract form or by identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or the substantive change in the listed contract form, as the case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. A copy of each such **Federal Register** document shall be sent by regular or electronic mail to all borrowers.

8. Section 1724.74 is revised to read as follows:

§ 1724.74 List of electric program standard contract forms.

(a) *General.* The following is a list of RUS electric program standard contract forms for architectural and engineering services. Paragraph (c) of this section contains the list of required contract forms, i.e., those forms of contracts that borrowers are required to use by the terms of their RUS loan agreements as implemented by the provisions of this part. Paragraph (d) of this section contains the list of guidance contract forms, i.e., those forms of contracts provided as guidance to borrowers in the planning, design, and construction of their systems. All of these forms are available from RUS. See § 1724.72(b) for availability of these forms.

(b) *Issuance Date.* Where required by this part to use a standard form of contract in connection with RUS financing, the borrower shall use that form identified by issuance date in the List of Required Contract Forms, § 1724.74(c), as most recently published as of the date the borrower executes the contract.

(c) *List of required contract forms.* (1) RUS Form 211, Rev. 6–98, Engineering Service Contract for the Design and Construction of a Generating Plant. This form is used for engineering services for generating plant construction.

(2) RUS Form 220, Rev. 6–98, Architectural Services Contract. This form is used for architectural services for building construction.

(3) RUS Form 236, Rev. 6–98, Engineering Service Contract—Electric System Design and Construction. This form is used for engineering services for distribution, transmission, substation, and communications and control facilities.

(d) *List of guidance contract forms.* (1) RUS Form 179, Rev. 9–66, Architects and Engineers Qualifications. This form is used to document architects and engineers qualifications.

(2) RUS Form 215, Rev. 5–67, Engineering Service Contract—System Planning. This form is used for engineering services for system planning.

(3) RUS Form 234, Rev. 3–57, Final Statement of Engineering Fee. This form is used for the closeout of engineering services contracts.

(4) RUS Form 241, Rev. 3–56, Amendment of Engineering Service Contract. This form is used for amending engineering service contracts.

(5) RUS Form 244, Rev. 12–55, Engineering Service Contract—Special Services. This form is used for miscellaneous engineering services.

(6) RUS Form 258, Rev. 4–58, Amendment of Engineering Service Contract—Additional Project. This form is used for amending engineering service contracts to add an additional project.

(7) RUS Form 284, Rev. 2–84, Final Statement of Cost for Architectural Service. This form is used for the closeout of architectural services contracts.

(8) RUS Form 297, Rev. 12–55, Engineering Service Contract—Retainer for Consultation Service. This form is used for engineering services for consultation service on a retainer basis.

(9) RUS Form 459, Rev. 9–58, Engineering Service Contract—Power Study. This form is used for engineering services for power studies.

9. Sections 1724.75 and 1724.76 are removed and reserved.

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

10. The authority citation for 7 CFR part 1726 is amended to read as follows.

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; 7 U.S.C. 6941 *et seq.*

11. Section 1726.24 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1726.24 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and the borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through H and J of this part prescribe when and how borrowers are required to use RUS standard forms of contracts in procurement and construction. Subpart I of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for procurement and construction.

* * * * *

12. Section 1726.26 is added to read as follows:

§ 1726.26 Interest on overdue accounts.

Certain RUS contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest ''Prime Rate'' listed in the ''Money Rates'' section of the Wall Street Journal on the date such invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

13. Section 1726.27 is added to read as follows:

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Form 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(c) Surety companies providing contractor's bonds shall be listed as acceptable sureties in the U.S. Department of the Treasury Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. Copies of the circular and interim changes may be obtained directly from the Government Printing Office (202) 512–1800. Interim changes are published in the **Federal Register** as they occur. The list is also available through the Internet at http://www.fms.treas.gov/c570/index.html and on the Department of the Treasury's computerized public bulletin board at (202) 874–6887.

14. Section 1726.300 is revised to read as follows:

§ 1726.300 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contract promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. (See section 5.16 of appendix A to subpart C to part 1718.) This subpart prescribes RUS procedures in promulgating standard contract forms and identifies those forms that borrowers are required to use.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1726.304(c), that borrowers are required to use in accordance with the provisions of this part. In addition, RUS promulgates standard contract forms contained in § 1726.304(d) that the borrowers may but are not required to use in the construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

15. Section 1726.301 is revised to read as follows:

§ 1726.301 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the Rural Electrification Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes called ''listed contract forms'') identified in the List of Required Contract Forms, § 1724.304(c).

(b) *Compliance.* If a borrower is required by this part or by the loan agreement to use a listed contract form, the borrower shall use the listed contracts in the format available from RUS or GPO. The forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so as to indicate the difference from the listed contract form. Electronic reproduction is not acceptable except where indicated in § 1726.304(c).

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case by case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking a waiver by RUS must provide RUS with a written request explaining the

need for the waiver. Waiver requests should be made prior to issuing the bid package to bidders.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in this part is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

16. Section 1726.302 is revised to read as follows:

§ 1726.302 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering into a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the address of the borrower as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are available from either RUS or the Government Printing Office (GPO), as indicated in § 1726.304. Interested parties may obtain the forms from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Washington, DC 20250–1522, telephone number (202) 720–8674, or the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954, telephone number (202) 512–1800. The listed contract forms can be found in § 1726.304(c).

17. Section 1726.303 is revised to read as follows:

§ 1726.303 Promulgation of new or revised contract forms.

RUS may, from time to time, undertake to promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1726.304, List of Electric Program Standard Contract Forms. The amendment may change the existing identification of a listed contract form; for example, changing the issuance date of a listed contract form or by identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or the substantive change in the listed contract form, as the case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementry information section of the notice of rulemaking. As appropriate, the document shall provide an opportunity for interested persons to provide comments. A copy of each such **Federal Register** document will be sent by regular or electronic mail to all borrowers.

18. Section 1726.304 is added to read as follows:

§ 1726.304 List of electric program standard contract forms.

(a) *General.* This section contains a list of RUS electric program standard contract forms. Paragraph (c) of this section contains the list of required contract forms, *i.e.*, those forms of contracts that borrowers are required to use by the terms of their RUS loan agreements as implemented by the provisions of this part. Paragraph (d) of this section sets forth the list of guidance contract forms, i.e., those forms of contracts provided as guidance to borrowers in the construction of their systems. See § 1726.302(b) for availability of these forms.

(b) *Issuance Date.* Where required by this part to use a standard form of contract in connection with RUS financing, the borrower shall use that form identified by issuance date in the List of Required Contract Forms, § 1726.304(c), as most recently published as of the date the borrower issues the bid package to bidders.

(c) *List of required contract forms.* (1) RUS Form 168b, Rev. 2–95, Contractor's Bond. This form is used to obtain a surety bond and is included in RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, and 831.

(2) RUS Form 168c, Rev. 2–95, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee. This form is available from RUS.

(3) RUS Form 180, Rev. 2–95, Construction Contract Amendment. This form is used to amend distribution line construction contracts. This form is available from RUS.

(4) RUS Form 181, Rev. 2–95, Certificate of Completion, Contract Construction for Buildings. This form is used for the closeout of RUS Form 257. This form is available from RUS.

(5) RUS Form 187, Rev. 2–95, Certificate of Completion, Contract Construction. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

(6) RUS Form 198, Rev. 2–95, Equipment Contract. This form is used for equipment purchases. This form is available from RUS.

(7) RUS Form 200, Rev. 2–95, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment. This form is available from RUS.

(8) RUS Form 201, Rev. 2–95, Right-of-Way Clearing Contract. This form is used for distribution line right-of-way clearing work which is to be performed separate from line construction. This form is available from RUS.

(9) RUS Form 203, Rev. 2–95, Transmission System Right-of-Way Clearing Contract. This form is used for transmission right-of-way clearing work which is to be performed separate from line construction. This form is available from RUS.

(10) RUS Form 213, Rev. 2–95, Certificate (''Buy American''). This form is used to document compliance with the ''Buy American'' requirement. This form is available from RUS.

(11) RUS Form 224, Rev. 2–95, Waiver and Release of Lien. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

(12) RUS Form 231, Rev. 2–95, Certificate of Contractor. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

(13) RUS Form 238, Rev. 2–95, Construction or Equipment Contract Amendment. This form is used to amend contracts except distribution line construction contracts. This form is available from RUS.

(14) RUS Form 251, Rev. 2–95, Material Receipt. This form is used to document receipt of owner furnished materials and is included in RUS Forms 764, 830, and 831. Electronic reproduction is acceptable for RUS Form 251.

(15) RUS Form 254, Rev. 2–95, Construction Inventory. This form is used for the closeout of RUS Forms 203, 764, 830, and 831. This form is available from RUS. Electronic reproduction is acceptable for RUS Form 254.

(16) RUS Form 257, Rev. 2–95, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction. This form is available from GPO.

(17) RUS Form 307, Rev. 2–95, Bid Bond. This form is used to obtain a bid bond and is included in RUS Forms 200, 203, 257, 764, 830, and 831.

(18) RUS Form 764, Rev. 2–95, Substation and Switching Station Erection Contract. This form is used to construct substations and switching stations. This form is available from RUS.

(19) RUS Form 786, Rev. 2–95, Electric System Communications and Control Equipment Contract. This form is used for delivery and installation of equipment for system communications. This form is available from RUS.

(20) RUS Form 790, Rev. 2–95, Distribution Line Extension Construction Contract (Labor and Materials). This form is used for limited distribution construction accounted for under work order procedure. This form is available from GPO.

(21) RUS Form 792, Rev. 2–95, Distribution Line Extension Construction Contract (Labor Only). This form is used for limited distribution construction accounted for under work order procedure. This form is available from GPO.

(22) RUS Form 792b, Rev. 2–95, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of and is included in RUS Forms 201, 790, 792.

(23) RUS Form 792c, Rev. 2–95, Supplemental Contract for Additional Project. This form is used to amend other contracts and is included in RUS Forms 201, 790, 792.

(24) RUS Form 830, Rev. 2–95, Electric System Construction Contract (Labor and Materials). This form is used for distribution and transmission line project construction. This form is available from GPO.

(25) RUS Form 831, Rev. 2–95, Electric Transmission Construction Contract (Labor and Materials). This form is used for transmission line project construction. This form is available from GPO.

(d) *List of guidance contract forms.* (1) RUS Form 172, Rev. 9–58, Certificate of Inspection, Contract Construction. This form is used to notify RUS that construction is ready for inspection. This form is available from RUS.

(2) RUS Form 173, Rev. 3–55, Materials Contract. This form is used for distribution, transmission, and general plant material purchases. This form is available from RUS.

(3) RUS Form 274, Rev. 6–81, Bidder's Qualifications. This form is used to document bidder's qualifications. This form is available from RUS.

(4) RUS Form 282, Rev. 11–53, Subcontract. This form is used for subcontracting. This form is available from RUS.

(5) RUS Form 458, Rev. 3–55, Materials Contract. This form is used to obtain generation plant material and equipment purchases not requiring acceptance tests at the project site. This form is available from RUS.

§§ 1726.310 through 1726.352 [Removed and Reserved]

18. Sections 1726.310 through 1726.352 are removed and reserved.

Dated: August 12, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–22930 Filed 8–26–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE147, Notice No. 23–98–03–SC]

Special Conditions: Raytheon Aircraft Company, Model 3000, Airplane Design

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Raytheon Model 3000 airplane. This airplane will have novel or unusual design features associated with the digital electronic engine/propeller controls and the suction defueling system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATE: Comments must be received on or before September 28, 1998.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE147, 601 East 12th Street, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE147. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 601 East 12th Street, Kansas City, Missouri, 816–426–6934, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE147.'' The postcard will be date stamped and returned to the commenter.

Background

On January 15, 1996, Raytheon Aircraft Company (formerly Beech Aircraft Corporation) applied for a Type Certificate (TC) for their new Model 3000. The Model 3000 is an all-metal, low-wing monoplane of conventional construction, powered by a single Pratt & Whitney (P&W) PT6A–68 engine flat rated at 1100 SHP. The airframe will be stressed for 7g positive and 3.5g negative loading. Maximum takeoff weight will be 6,300 pounds. The crew compartment will be pressurized to a maximum differential of 3.6 psig and accommodate two pilots equipped with zero-zero ejection seats in a stepped tandem seating arrangement. The airplane will feature a 3,000 psi hydraulic system, powered by a single engine driven pump, to operate the landing gear, flaps, and speed brakes. The V_{mo} for the Model 3000 will be 320 KCAS, and the maximum altitude will be 31,000 feet MSL. Each cockpit will be equipped with electronic flight instruments for primary attitude, heading, and navigation information display.

Type Certification Basis

Under the provisions of 14 CFR part 21 § 21.17, Raytheon Aircraft Company must show that the Model 3000 meets the applicable provisions of part 23, effective February 1, 1965, as amended by Amendments 23–1 through 23–47; 14 CFR part 23, §§ 23.201, 23.203, and 23.207, as amended by Amendment 23–50; 14 CFR part 34, effective September 10, 1990, as amended by the amendment in effect on the date of

certification; 14 CFR part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect on the day of certification; The Noise Control Act of 1972; and special conditions for Protection from High Intensity Radiated Fields (HIRF); exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (part 23) do not contain adequate or appropriate safety standards for the Model 3000 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 3000 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 3000 will incorporate the following novel or unusual design features:

Digital Electronic Engine Controls

The Model 3000 design includes a digital electronic engine/propeller control, known as a Power Management Unit (PMU). Although the precedent for electronic engine controls has been previously established, the PMU utilized on the Model 3000 performs functions not envisaged when part 23 was developed. With the Model 3000, the (Power Control Lever) PCL is a single lever, which has a mechanical and electrical interface to the PMU in order to produce ''jet-like'' thrust characteristics during rapid power changes and at low power conditions. PCL movement is transmitted to the PMU, which, in turn, controls fuel flow, gas generator speed, and propeller speed. Propeller pitch is not pilot controllable; therefore, a separate propeller control lever is not supplied. During normal operation, propeller pitch is governed at 100 percent Np. Low airspeed and power combinations result in propeller pitch going to the mechanical low pitch stop (similar to a fixed-pitch propeller). During large power transitions below 100 percent Np (idle to takeoff power), the PMU will control propeller pitch. The PMU is utilized to control the thrust response of the engine-propeller combination and it prohibits operation of the engine-propeller combination in propeller RPM ranges with adverse vibration characteristics. There is no guidance in part 23 concerning the protection of the PMU from the indirect effects of lightning.

Suction Defuel Capability

The Model 3000 design includes a suction defuel capability not envisaged when part 23 was developed. It is understood that suction defuel is a common feature in part 25 airplanes. The Model 3000 airplane will have pressure fuel and defuel as well as gravity fuel and defuel capability. Pressure defueling essentially entails reversing the pumps on the fueling vehicle and ''sucking'' fuel from the airplane though the servicing port. Section 23.979 addresses pressure fueling but not suction defueling. Any suction defuel system components, in addition to meeting the general requirements for part 23 fuel systems, must also function as intended.

Applicability

As discussed above, these special conditions are applicable to the Model 3000. Should Raytheon Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied for the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. (106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.17; and 14 CFR part 11, §§ 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Raytheon Aircraft Company Model 3000 airplanes.

1. Digital Electronic Engine/Propeller Control (PMU)

(a) Any failure of the Power Management Unit must be annunciated to the crew.

(b) Failures of the Power Management Unit that affect flight characteristics must be identified and evaluated, and appropriate flight manual procedures developed, including possible prohibitions on continued flight or dispatch.

(c) The functioning of the Power Management Unit must be protected to ensure that the control will continue to perform critical functions (functions whose failure condition would prevent continued safe flight and landing) after the aircraft is exposed to lightning.

2. Suction Defuel

(a) The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.

Issued in Kansas City, Missouri on August 14, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–23006 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–195–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP series airplanes. This proposal would require replacement of the fuel feed hose assemblies of the auxiliary power unit (APU) with new hose assemblies. This proposal is prompted by a report of the collapse of the inner casing of the fuel feed hose that supplies fuel to the APU. The actions specified by the proposed AD are intended to prevent failure of the fuel feed hose assemblies, which could result in fuel leakage and consequent risk of fire in the aft equipment bay.

DATES: Comments must be received by October 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Randy Griffith, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–195–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

During a functional test of the auxiliary power unit (APU) on a Model Hawker 800XP series airplane, conducted by the manufacturer, the APU shut down automatically. Investigation of the incident revealed that the inner casing of the fuel feed hose that supplies fuel to the APU had collapsed. The inner casing of the hose had adhered to the hose end fittings because of the lack of lubrication during hose manufacture. When the hose end fittings were torqued during installation on the airplane, the inner casing became twisted and collapsed. Further inspection of other Model Hawker 800XP series airplanes revealed additional hoses with a similar condition. Such collapse of the fuel feed hose, if not corrected, could result in fuel leakage and consequent increased risk of fire in the aft equipment bay.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB.49–3018, dated August 1997, which describes procedures for replacement of the fuel feed hose assemblies of the auxiliary power unit (APU) with new hose assemblies. The service bulletin also describes the procedures (shutdown of APU and display of warning notices prohibiting use) to be used if replacement fuel feed hose assemblies are not immediately available for installation. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,300, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech): Docket 98–NM–195–AD.

Applicability: Model Hawker 800XP series airplanes, serial numbers 258297 through 258304 inclusive, and 258307 through 258309 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fuel feed hose assemblies, which could result in fuel leakage and consequent risk of fire in the aft equipment bay, accomplish the following:

(a) Within 300 flight hours or 3 months after the effective date of this AD, whichever occurs later, replace the fuel feed hose assemblies of the auxiliary power unit (APU) with new hose assemblies in accordance with Raytheon Aircraft Service Bulletin SB.49–3018, dated August 1997.

(b) If replacement fuel feed hose assemblies are not immediately available for installation, shut down the APU and display warning notices prohibiting use of the APU in accordance with Raytheon Aircraft Service Bulletin SB.49–3018, dated August 1997, until the replacement required by paragraph (a) of this AD is accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22962 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–161–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN 601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model SN 601 (Corvette) series airplanes. This proposal would require repetitive inspections to detect discrepancies of the upper and lower reinforcement panels and panel fasteners of the wing roots; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent debonding of the upper and lower reinforcement panels of the wing roots, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by September 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–161–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model SN 601 (Corvette) series airplanes. The DGAC advises that it has received reports of debonding of the upper and lower surface reinforcement panels of the wing roots on these airplanes. The debonding has been attributed to water infiltration. This condition, if not corrected, could result in fatigue damage of the panel fasteners and corrosion of the panels and wing structure, and consequent reduced structural integrity of the wing.

Explanation of Relevant Service Information

The manufacturer has issued Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30, 1994. This service bulletin describes procedures for removal of the left and right lateral fairings between frames 16 and 22; repetitive sonic resonance inspections to detect debonding of the upper and lower surface reinforcement panels of the wing root; and repetitive visual inspections to detect damage of the reinforcement panel fasteners.

In addition, Aerospatiale has issued Corvette Service Bulletin 57–25, dated November 21, 1990, which describes procedures for replacement of the upper and lower surface reinforcement panels of the wing root and treatment of the area for corrosion if excessive debonding or fastener damage is found during an inspection described in Aerospatiale Corvette Service Bulletin 57–24.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 91–045–010(B)R1, dated August 3, 1994, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although Aerospatiale Corvette Service Bulletin 57–24 specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $120, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 98–NM–161–AD.

Applicability: Model SN 601 (Corvette) series airplanes on which Aerospatiale Modification 1049 has been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent debonding of the upper and lower reinforcement panels of the wing roots, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For airplanes that have been modified in accordance with Aerospatiale Corvette Service Bulletin 57–25, dated November 21, 1990: Within 8,300 flight cycles after installation of the modification, or within 100 flight cycles after the effective date of

this AD, whichever occurs later, perform a sonic resonance inspection to detect debonding of the upper and lower reinforcement panels of the wing roots and a visual inspection to detect fatigue damage of the panel fasteners, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30, 1994.

(1) If no panel debonding or fastener damage is found, repeat the sonic resonance inspection and the visual inspection thereafter at intervals not to exceed 1,000 flight cycles.

(2) If any panel debonding or fastener damage is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the Direction Gónórale de l'Aviation Civile (DGAC), which is the airworthiness authority for France (or its delegated agent).

(b) For airplanes that have not been modified in accordance with Aerospatiale Corvette Service Bulletin 57–25, dated November 21, 1990: Prior to the accumulation of 8,200 total flight cycles, or within 100 flight cycles after the effective date of this AD, whichever occurs later, perform a sonic resonance inspection to detect debonding of the upper and lower reinforcement panels of the wing roots, and a visual inspection to detect fatigue damage of the panel fasteners, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30,
1994.

(1) For any reinforcement panel on which no debonding or fastener damage is found, repeat the sonic resonance inspection and the visual inspection thereafter at intervals not to exceed 2,500 flight cycles or three years, whichever occurs first.

(2) For any reinforcement panel on which debonding is detected, and the total debonded area is less than or equal to 45% of the total area, and no contiguous debonded area on the panel is greater than 5% of the total area of the panel, repeat the sonic resonance inspection and the visual inspection thereafter at the interval specified in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii), as applicable, of this AD.

(i) If the total debonded area on the panel is less than or equal to 10% of the total area, repeat the inspections of that panel thereafter at intervals not to exceed 2,500 flight cycles or 3 years, whichever occurs first.

(ii) If the total debonded area on the panel is greater than 10% and less than or equal to 30% of the total area, repeat the inspections of that panel thereafter at intervals not to exceed 2,000 flight cycles or 3 years, whichever occurs first.

(iii) If the total debonded area of the panel is greater than 30% and less than or equal to 45% of the total area, repeat the inspections of that panel thereafter at intervals not to exceed 1,000 flight cycles or 2 years, whichever occurs first.

(3) For any reinforcement panel on which debonding is detected, and the total debonded area of the panel is greater than 45% of the total area, or if any single debonded area on any single panel is greater than 5% of the total area of that panel, or if any panel fastener damage is detected, accomplish the actions specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this AD.

(i) Prior to further flight, inspect the skin to determine the level of corrosion relative to the skin thickness in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(A) If the depth of corrosion of the skin is less than or equal to 10% of the skin thickness, remove and replace the panel and treat the skin for corrosion, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–25, dated November 21, 1990.

(B) If the depth of corrosion of the skin exceeds 10% of the skin thickness, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or in accordance with a method approved by the DGAC (or its delegated agent).

(ii) For airplanes on which the actions of paragraph (b)(3)(i)(A) of this AD have been accomplished: Within 8,300 flight cycles after accomplishment of paragraph (b)(3)(i)(A) of this AD, perform a sonic resonance inspection to detect debonding of the panel and a visual inspection to detect fatigue damage of the panel fasteners, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30, 1994.

(A) If no debonding or fastener damage is found, repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles.

(B) If any debonding or fastener damage is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or in accordance with a method approved by the DGAC (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 91–045–010(B)R1, dated August 3, 1994.

Issued in Renton, Washington, on August 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22961 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–14]

Proposed Establishment of Class D Airspace; Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: This notice proposes to establish Class D airspace at Albemarle, NC. The North Carolina Air National Guard is installing a control tower at the Stanley County Airport. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This would establish Class D airspace extending upward from the surface to and including 3,100 feet MSL within a 3.9-mile radius of the Stanley County Airport. Control tower hours of operation are tentatively scheduled for 1300–2100, Tuesday through Saturday.

DATES: Comments must be received on or before September 28, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–14 Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ASO–14.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace at Albemarle, NC. The North Carolina Air National Guard is installing a control tower at the Stanley County Airport. Due to a planned increase in military air traffic and the mixing of general aviation with military traffic, the National Guard Bureau has decided to establish an operating control tower at the Stanley County Airport. Class D surface area airspace is required when the control tower is open to accommodate current SIAPs and for IFR operations at the airport. Class D airspace designations for airspace areas extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Albemarle, NC [New]

Stanley County Airport, NC
(Lat. 35°24′55″ N, long. 80°09′03″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 3.9-mile radius of Stanley County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on August 17, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–23007 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–15]

Proposed Amendment of Class E Airspace; Chester, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Chester, SC. A Non-Directional Radio Beacon (NDB) Runway (RWY) 35 Standard Instrument Approach Procedure (SIAP) has been developed for Chester Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Chester Municipal Airport. The Class E airspace would be increased from a 6.4-mile radius to a 7-mile radius of the Chester Municipal Airport.

DATES: Comments must be received on or before September 28, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–15, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ASO–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Chester, SC. A NDB RWY 35 SIAP has been developed for Chester Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Chester Municipal Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS, B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO SC E5 Chester, SC [Revised]

Chester Municipal Airport, SC
(Lat. 34°47′22″ N, long. 81°11′45″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 7-mile radius of Chester Municipal Airport.

* * * * *

Issued in College Park, Georgia, on August 17, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–23008 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND–001–0002b and ND–001–0004b; FRL–6150–7]

Clean Air Act Approval and Promulgation of State Implementation Plan for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve certain State implementation plan (SIP) revisions submitted by the North Dakota Governor with letters dated January 9, 1996 and September 10, 1997. The January 9, 1996 revisions are specific to a rule regarding emissions of sulfur compounds (the remainder of the State's January 9, 1996 submittal was handled separately). The September 10, 1997 revisions are specific to air pollution control rules regarding general provisions and emissions of particulate matter and organic compounds. Revisions to the minor source construction permit program will be handled separately. In addition, the September 10, 1997 submittal included direct delegation requests for emission standards for hazardous air pollutants (NESHAP) and emission standards for hazardous air pollutants for source categories, as well as the State's plan for existing municipal solid waste landfills, which were all handled separately.

Finally, EPA is providing notice that it granted delegation of authority to North Dakota on May 28, 1998, to implement and enforce the New Source Performance Standards (NSPS) promulgated in 40 CFR Part 60, as of October 1, 1996 (excluding subpart Eb).

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the

approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before September 28, 1998.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58506.

FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Jack McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 98–22900 Filed 8–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6151–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Coshocton City Landfill Site, Coshocton, Ohio, from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Coshocton City Landfill Site (the Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that Responsible parties or other persons have implemented all appropriate response actions required, and U.S. EPA, in consultation with the State of Ohio, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Any comments concerning the proposed deletion of the Site from the NPL must be submitted on or before September 28, 1998.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Coshocton Public Library, 655 Main Street, Coshocton, Ohio. Requests for copies of documents or the comprehensive set of information should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Anthony Rutter Remedial Project Manager at (312) 886–8961 or Sherry Estes (C–14J), Assistance Regional Counsel, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7164 or Robert Paulson (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–0273.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The U.S. Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Coshocton City Landfill Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The U.S. EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Potentially Responsible Parties or the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the Site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this Site and explains how the Site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines that the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Coshocton City Landfill was built on an abandoned coal strip mine and is a 28 acre landfill in Franklin Township, Coshocton County, Ohio, 3.5 miles southeast of the City of Coshocton, Ohio. Much of the land to the south and to the west of the site has been mined and reclaimed.

The Coshocton Landfill is located between two small intermittent creeks that drain toward the southwest into the Muskingum River, 1.5 miles west of the site. Active, abandoned, and reclaimed coal strip mines are scattered throughout the region. In 1968, the City of Coshocton purchased the landfill property and used the Site for disposal of municipal and industrial wastes. Disposal ceased in 1979 and the landfill was closed.

The first set of expanded samples collected from existing monitoring wells in 1982 indicated the presence of VOCs in the ground water near the Site. Subsequent sampling confirmed the presence of VOCs in the groundwater.

The Coshocton Landfill Site was releasing contaminants to the environment. The major release mechanism was leachate migrating to surface water. However, the extent of the leachate's migration to groundwater was unclear. Results of samples taken from leachate, groundwater, surface water, and sediment water, and sediment identified approximately 30 chemical constituents.

In September 1983, the Site was placed on the U.S. EPA's National Priorities List (NPL) (48 FR 175). On March 30, 1984, U. S. EPA issued a unilateral administrative order to the City of Coshocton requiring it to undertake some interim measures, primarily to protect surface water and to address the leachate being generated. Approximately six months later, U.S. EPA determined that the City's proposal complied with the terms of the order, and by letter dated April 16, 1986, U. S. EPA agreed to relieve the City of its obligation to perform quarterly sampling.

The Remedial Investigation (RI) and Feasibility Study (FS) were released for public comment on February 8, 1988. The comment period was extended twice and closed on March 17, 1988. A public meeting was held on February 23, 1988. A presentation on the RI and FS was made and then a question and answer session, as well as an opportunity for making public comments, was held. Public comments were also submitted to U. S. EPA by mail. A Responsiveness Summary to these comments was compiled.

The Record of Decision (ROD) was signed by U. S. EPA on June 17, 1988. The Record of Decision (ROD) called for the construction of a landfill cap; regrading; revegetation; and groundwater, surface water, and landfill gas monitoring. In addition, future land-use restrictions were to be placed on the property. The groundwater, surface water and landfill gas monitoring was to be used to determine the necessity of installing a leachate collection and treatment system, and a landfill gas collection and venting system. It was determined during the Remedial Design that it was not necessary to install a leachate collection system or a gas venting system. If a residence is documented to be within 1,000 feet of the landfill, then the ROD called for the preparation and submittal of an explosive gas monitoring plan to U.S. EPA and Ohio EPA (OEPA) within 90 days of the site inspection noting the presence of the residence. An explosive gas monitoring plan was not prepared because there weren't any residences within 1,000 feet of the landfill.

Six potentially responsible parties signed a remedial design/remedial action (RD/RA) consent decree with U.S. EPA to implement the response activities determined to be necessary in the 1988 ROD. The RD/RA was entered by the Court on July 22, 1991, after a thirty-day public comment period, and after the filing of certain objections by Pretty Products, Inc, a potentially responsible party which did not sign the RD/RA consent decree. The RD/RA Settling Defendants consisted of the following parties: the City of Coshocton, Ohio; General Electric Company; Steel Ceilings Division of Airtex Corporation; Stone Container Corporation; Excello, Inc.; Edmont-Wilson, Inc., a/k/a Becton Dickinson and Company; Buckeye Fabric Finishers, Inc.; and Shaw-Barton, Inc. The Settling Defendants completed the response activities required by the RD/RA Consent Decree and the ROD with U.S. EPA and Ohio EPA oversight. Pretty Products, Inc. subsequently entered into a cost recovery settlement with U.S. EPA, for U.S. EPA's unreimbursed past and oversight costs.

On September 25, 1995, the Close Out Report was signed. The Report documented that the response actions were constructed consistent with the approved remedial design, and with the ROD. Groundwater monitoring occurring subsequent to the Close Out Report documented that contaminants were found below the clean-up levels. For this reason, U.S. EPA proposes to delete the Site from the NPL.

U.S. EPA, with concurrence from the State of Ohio, has determined that all Responsible parties or other persons have implemented all appropriate response actions required at the Coshocton Landfill Superfund Site, and no further CERCLA response actions are appropriate in order to provide protection of public health and environment. Therefore, U.S. EPA proposes to delete the Site from the NPL.

Dated: August 14, 1998.

Norman Niedergang,

Acting Regional Administrator, Region V.

[FR Doc. 98–22790 Filed 8–26–98; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 300 and 303

[FTR Amendment___—1998 Edition]

RIN 3090–AG76

Federal Travel Regulation, General and Payment of Expenses Connected With the Death of Certain Employees

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Federal Travel Regulation (FTR) provisions pertaining to which employees are subject to the FTR rules governing payment of expenses in connection with death of employees or

their immediate family members. This proposed rule sets forth the allowable expenses authorized by 5 U.S.C. 5742 for the preparation and transportation of the remains of a deceased employee, and for the transportation of the immediate family and household goods of a deceased employee, and for the transportation of the remains of a member of the employee's immediate family who dies while residing with the employee outside the continental United States or in transit thereto or therefrom.

DATES: Comments must be received on or before October 26, 1998.

ADDRESSES: Send comments to the General Services Administration, Office of Governmentwide Policy, Office of Transportation and Personal Property, Travel and Transportation Management Policy Division (MTT), 1800 F Street, NW, Washington, DC 20405–0001. Telefax: 202–501–0349. E-mail: sandra.batton@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Technical Information: Sandra Batton, telephone (202) 208–7642. FTR ''plain language'' format: Internet General Services Administration (GSA), ftrtravel.chat@gsa.gov.

SUPPLEMENTARY INFORMATION: There are significant changes in this proposed rule regarding payment of expenses in connection with the death of employees and their immediate family members. This proposed rule amends FTR parts 300–2 and 300–3 to incorporate FTR chapter 303 changes and implements the Administrator of General Services' authority under 5 U.S.C. 5721–5738 and 5741–5742 to require agencies to pay certain expenses in connection with the death of an employee and/or his/her immediate family member.

This amendment is written in the ''plain language'' style of regulation writing as a continuation of GSA's effort to make the FTR easier to understand and use. The ''plain language'' style of regulation writing is a new, simpler to read and understand, question and answer regulatory format. Questions are in the first person, and answers are in the second person. Use of the pronouns ''we'', ''you'', and their variants throughout these chapters refer to the agency.

What Are the Significant Changes Proposed?

There are significant changes in the proposed rule as compared to the provisions for payment of death-related expenses currently contained in Chapter 303. The proposed rule:

(a) Removes the $250 limit for preparation and transportation of remains to allow payment of actual costs;

(b) Removes restrictions concerning the return of baggage;

(c) Allows payment or continued payment of relocation expenses of employee's immediate family when the employee dies before completion of relocation; and

(d) Requires mandatory payment of allowable death-related expenses.

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of E.O. 12866 of September 30, 1993. This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply. The Paperwork Reduction Act does not apply, because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801, since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapters 300 and 303

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, it is proposed that 41 CFR Chapter 300 be amended to read as follows:

PART 300–2—HOW TO USE THE FTR

1. The authority citation for 41 CFR part 300–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 300–2.22 is amended by revising the table to read as follows:

§ 300–2.22 Who is subject to the FTR?

* * * * *

For	The employee provisions are contained in	And the agency provisions are contained in
Chapter 301	Subchapters A, B, and C	Subchapter D.
Chapter 303	N/A	Subparts A, B, C, D, E and F.

PART 300–3—GLOSSARY OF TERMS

3. Section 300–3.1 is amended by adding in alphabetical order the term ''Mandatory mobility agreement'' to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Mandatory mobility agreement—Agreement used for civilian mobility programs for enhancing career development and progression and/or achieving mission effectiveness.

* * * * *

4. 41 CFR chapter 303 is amended by removing parts 303–1 and 303–2; and by adding new part 303–70 to read as follows:

CHAPTER 303—PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

PART 303–70—AGENCY REQUIREMENTS FOR PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

Subpart A—General Policies

Sec.

Authority: 5 U.S.C. 5721–5738; 5741–5742; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—General Policies

Note to Subpart A: When an employee dies while performing, or from injuries resulting from performance of, official duty, death-related expenses are payable under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8134. For further information contact the Department of Labor, Federal Employees' Compensation Division, 200 Constitution Avenue, NW, Washington, DC 20210.

§ 303–70.1 When must we authorize payment of expenses related to an employee's death?

When, at the time of death, the employee was:

(a) On official travel; or

(b) Performing official duties outside CONUS; or

(c) Absent from duty as provided in § 303–70.3; or

(d) Assigned away from his/her home of record under a mandatory mobility agreement.

§ 303–70.2 Must we pay death-related expenses when the employee's death is not work-related?

Yes, provided the requirements in § 303–70.1 are met.

§ 303–70.3 Must we pay death-related expenses for an employee who dies while on leave or on a nonworkday while on TDY or stationed outside CONUS?

Yes. However, payment cannot exceed the amount allowed if death had occurred at the temporary duty station or at the official station outside CONUS.

§ 303–70.4 May we pay death-related expenses under this chapter if the same expenses are payable under other laws of the United States?

No.

Subpart B—General Procedures

§ 303–70.100 May we pay the travel expenses of an escort for the remains of the decedent?

No.

§ 303–70.101 Must we provide assistance in arranging for preparation and transportation of employee remains?

Yes.

Subpart C—Allowances for Preparation and Transportation of Remains

§ 303–70.200 What costs must we pay for preparation and transportation of remains?

All actual costs including but not limited to:

(a) Preparation of remains:

(1) Embalming or cremation;

(2) Necessary clothing;

(3) A casket or container suitable for shipment to place of burial; and

(4) Expenses necessary to comply with local laws at the port of entry in the United States, and

(b) Transportation by common carrier (that is normally used for transportation of remains), hearse, other means, or a combination thereof, from the temporary duty station or official station outside CONUS to the actual residence or place of burial, including but not limited to:

(1) Movement from place of death to a mortuary and/or cemetery;

(2) Shipping permits;

(3) Outside case for shipment and sealing of the case if necessary;

(4) Removal to and from the common carrier; and/or

(5) Ferry fares, bridge tolls, and similar charges.

Note to § 303–70.200: Costs for an outside case are not authorized for transportation by hearse. Costs for transportation by hearse or other means cannot exceed the cost of common carrier (that is normally used for transportation of remains). Transportation costs to place of burial cannot exceed the actual cost to the place of actual residence.

Subpart D—Transportation of Family Members, Baggage, and Household Goods

§ 303–70.300 Must we pay transportation costs to return the deceased employee's baggage?

Yes, to the employee's official duty station or actual residence. However, you may not pay insurance of or reimbursement for loss or damage to baggage.

§ 303–70.301 Are there any limitations on the baggage we may transport?

Yes. You may only transport Government property and the employee's personal property.

§ 303–70.302 When the employee dies at or while in transit to or from his/her official station outside CONUS, must we return the employee's immediate family, baggage and household goods to the actual residence or alternate destination?

Yes. However, your agency head or his/her designated representative must approve the family's election to return to an alternate destination, and the allowable expenses cannot exceed the cost of transportation to the decedent's actual residence. Travel and transportation must begin within one year from the date of the employee's death. A one-year extension may be granted if requested by the family prior to the expiration of the one-year limit.

§ 303–70.303 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies while in transit to his/her new duty station within CONUS?

Yes, if the immediate family chooses to continue the relocation, you must continue payment of relocation expenses for the immediate family if it was included on the employee's relocation travel orders. (See § 303–70.305.)

§ 303–70.304 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies after reporting to the new duty station within CONUS, but the family was in transit to the new duty station or had not begun his/her en-route travel?

Yes, if the immediate family chooses to continue the relocation, you must continue payment of relocation expenses for the immediate family if they were included on the employee's relocation travel orders. (See § 303–70.305.)

§ 303–70.305 What relocation expenses must we authorize for the immediate family under §§ 303–70.303 and 303–70.304?

When the immediate family chooses, the following expenses must be authorized:

(a) Travel to the new duty station; or

(b) Travel to an alternate destination, selected by the immediate family, not to exceed the remaining constructive cost of travel to the new duty station.

(c) Temporary quarters not to exceed 60 days, to be paid at the per diem rate for an unaccompanied spouse and immediate family.

(d) Shipment of household goods to the new or old duty station, or to an alternate destination selected by the spouse and/or immediate family. However, the cost may not exceed the constructive cost of transportation between the old and the new duty stations.

(e) Storage of household goods not to exceed 90 days.

(f) Reimbursement of real estate expenses incident to the relocation.

(g) Shipment of POV to the new or old duty station, or to an alternate destination, selected by the immediate family. However, the cost may not exceed the constructive cost of transportation between the old and the new duty stations.

Subpart E—Preparation and Transportation Expenses for Remains of Immediate Family Members

§ 303–70.400 When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, must we furnish mortuary services?

Yes, if requested by the employee and when:

(a) Local commercial mortuary facilities and supplies are not available; or

(b) The cost of available mortuary facilities and supplies are prohibitive as determined by your agency head.

Note to § 303–70.400: The employee must reimburse you for all authorized mortuary facilities and supplies.

§ 303–70.401 When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, must we pay expenses to transport the remains?

Yes, if requested by the employee, payment must be made to transport the remains to the actual residence of the dependent. The employee may elect an alternate destination, which must be approved by your agency head or his/her designated representative. In that case, the allowable expenses cannot exceed the cost of transportation to the decedent's actual residence.

§ 303–70.402 When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, may we pay burial expenses?

No.

§ 303–70.403 When a family member, residing with the employee, dies while in transit to the employee's duty station outside CONUS must we furnish mortuary services, and/or transportation of remains?

Yes, if requested by the employee. You must follow the guidelines in § 303–70.400 and § 303–70.401 for payment of these expenses.

Subpart F—Policies and Procedures for Payment of Expenses

§ 303–70.500 Are receipts required for claims for reimbursement?

Yes.

§ 303–70.501 To whom should we make payment?

You should pay:

(a) The person performing the service; or

(b) Reimburse the person who made the original payment.

Dated: August 19, 1998.

John G. Sindelar,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 98–22915 Filed 8–26–98; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7254]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any

existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Alaska	Nenana (City) Unorganized Borough.	Tanana River	Approximately 850 feet upstream of Highway Bridge.	*357	*355
			Approximately 2,000 feet upstream of Railway Bridge.	*359	*357
Maps are available for inspection at the City of Nenana City Hall, 3 Market Street, Nenana, Alaska.					
Send comments to The Honorable Robert L. Knight, Mayor, City of Nenana, P.O. Box 00070, Nenana, Alaska 99760.					
Arkansas	Benton County and Incorporated Areas.	Osage Tributary 1	Approximately 800 feet downstream of Horsebarn Road.	None	+1,251
			Approximately 1,000 feet upstream of Highway 102.	None	+1,299.8
		Tributary A1	At confluence of Tributary A	None	+1,099
			Approximately 3,700 feet upstream of confluence of Tributary A.	None	+1,182
		Osage Tributary 2	Approximately at confluence of Osage Tributary 1.	None	+1,242.7
			Approximately 1,900 feet upstream of confluence of Osage Tributary 1.	None	+1,260.5
		Tributary C	Approximately 950 feet downstream of F Street Northeast.	None	+1,231.5
			Approximately 500 feet upstream of F Street Northeast.	None	+1,271
		McKisic Tributary	Approximately 700 feet downstream of Highway 71B.	None	+1,040.5
			Approximately 4,500 feet upstream of Slaughter Pen Road.	None	+1,232
		McKisic Creek	Approximately 500 feet downstream of Highway 71B.	None	+1,039.5
			Approximately 900 feet upstream of Peach Orchard Road.	None	+1,086.2
		Tributary A	Approximately 200 feet downstream of Northwest A Street.	None	+1,065.5
			Approximately 300 feet upstream of Highway 71B.	None	+1,236

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at 215 East Central, Bentonville, Arkansas.					
Send comments to The Honorable Clyde C. Cummings, Benton County Judge, 215 East Central, Suite 9, Bentonville, Arkansas 72712.					
Maps are available for inspection at 315 Southwest A Street, Bentonville, Arkansas.					
Send comments to The Honorable Terry B. Coberly, Mayor, City of Bentonville, 117 West Central, Bentonville, Arkansas 72712.					
	Clarksville (City) Johnson County.	Little Spadra Creek	Approximately 100 feet downstream from eastbound I–40.	None	+352.5
			Approximately 500 feet upstream of Highway 64.	None	+368.8
		Spadra Branch	Approximately 1,990 feet downstream from the downstream County Road 82.	None	+391.6
			Approximately 100 feet upstream of County Road 82.	None	+411.5
		Spadra Creek (Before Overtopping).	Approximately 120 feet downstream of Highway 40.	None	+356.2
			Approximately 4,600 feet upstream of the Missouri Pacific Railroad.	None	+394.4
		Little Willett Branch	Approximately 4,150 feet downstream of Highway 103.	None	+377.3
			Approximately 75 feet upstream of Highway 103.	None	+409.6
Maps are available for inspection at the City of Clarksville City Hall, Walnut and Cherry, Clarksville, Arkansas.					
Send comments to The Honorable Marvin Vinson, Mayor, City of Clarksville, P.O. Box 409, Clarksville, Arkansas 72830.					
Kansas	Riley (City) Riley County.	Wildcat Creek Tributary	Just downstream of Chestnut Street	None	*1,270
			Approximately 450 feet upstream of Walnut Street.	None	*1,281
Maps are available for inspection at the City of Riley City Hall, 902 North Noble, Riley, Kansas.					
Send comments to The Honorable Jerry Baer, Mayor, City of Riley, P.O. Box 314, Riley, Kansas 66531.					
Louisiana	LeCompte (Town) Rapides Parish.	Bayou Boeuf	Approximately at Highway 112 (8,500 feet above unnamed walk bridge).	None	*68
			Approximately at the walk bridge	None	*69
Maps are available for inspection at 1302 Weemes, LeCompte, Louisiana.					
Send comments to The Honorable Sherman Roberts, Mayor, City of LeCompte, P.O. Box 649, LeCompte, Louisiana 71346.					
	Rapides Parish (Unincorporated Areas).	Bayou Boeuf	Approximately at Highway 112 (8,500 feet above unnamed walk bridge).	None	*68
			Approximately at the walk bridge at the corporate limits.	None	*69
Maps are available for inspection at 5610 East Coliseum Boulevard, Alexandria, Louisiana.					
Send comments to The Honorable Richard Billings, Police Jury President, 701 Murray Street, Alexandria, Louisiana 71301.					
New Mexico	Bosque Farms (Village) Valencia County.	Rio Grande (East Overbank).	Approximately 36,000 feet above limit of detailed study, at the southern corporate limits.	*4,859	+4,859
			Approximately 37,000 feet above limit of detailed study.	*4,860	+4,860
		Rio Grande (West Split Flow).	Approximately 8,000 feet downstream of Esperanza Road.	None	+4,860
			Approximately 2,000 feet upstream of Green Acres Lane.	None	+4,873
		Rio Grande (East Split Flow).	Approximately 36,000 feet above limit of detailed study.	None	+4,860
			Approximately 52,700 feet upstream of limit of detailed study, at the north corporate limits.	None	+4,873
Note: To convert from NGVD to NAVD, add 2.5 feet.					
Maps are available for inspection at the Village of Bosque Farms Village Hall, 1455 West Bosque Loop, Bosque Farms, New Mexico.					
Send comments to The Honorable Carl R. Allen, Mayor, Village of Bosque Farms, 1455 West Bosque Loop, Bosque Farms, New Mexico 87068.					
	Clovis (City) Curry County.	West Second Street Drain	Approximately 2,250 feet upstream of confluence with Northeast Drain.	*4,222	*4,222

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just downstream of intersection of Thomas and West Seventh Street.	None	*4,288
		Northeast Drain	Approximately 5,000 feet downstream of Trades Road.	None	*4,214
			Approximately 200 feet upstream of 21st Street.	*4,270	*4,270
			Approximately 1,250 feet upstream of Prince Street.	*4,290	*4,290
		Thomas Ditch 2	Approximately 200 feet upstream of Thomas Ditch.	*4,289	*4,290
			Approximately 1,350 feet upstream of Debra Street.	*4,314	*4,318
		Northwest Drain	Approximately 200 feet upstream of confluence with Northwest Drain.	*4,245	*4,242
			Approximately 1,900 feet upstream of Echols Avenue.	*4,310	*4,308
		Thomas Ditch 1	Just downstream of Brady Avenue	None	*4,259
			Just upstream of Jefferson Street	None	*4,296
Maps are available for inspection at the City of Clovis City Hall, 321 Connelly Street, Clovis, New Mexico.					
Send comments to The Honorable David Lansford, Mayor, City of Clovis, 321 Connelly Street, Clovis, New Mexico 88101.					
	Los Lunas (Village) Valencia County.	Rio Grande (Main Channel).	Just downstream of Main Street	None	+4,855
			Just upstream of Main Street	None	+4,855
		Rio Grande (West Overbank).	Approximately 2,000 feet downstream of Lopez Road.	None	+4,845
			Approximately 13,000 feet upstream of East Main Street.	None	+4,864
		Rio Grande (East Overbank).	Approximately 3,000 feet downstream of State Route 49.	None	+4,848
			Approximately 2,000 feet upstream of State Route 49.	None	+4,853
Maps are available for inspection at the Village of Los Lunas, City Hall, 660 Main Street, Los Lunas, New Mexico.					
Send comments to The Honorable Louis F. Huning, Mayor, Village of Los Lunas, P.O. Box 1209, Los Lunas, New Mexico 87031.					
	Valencia County (Unincorporated Areas).	Rio Grande (Main Channel).	At limit of detailed study	None	+4,836
			Approximately 48,400 feet above limit of detailed study, at border of the Isleta Indian Reservation.	None	+4,878
		Rio Grande (West Overbank).	At limit of detailed study	None	+4,835
			Approximately 43,500 feet above limit of detailed study, at the Valencia-Bernalillo County border.	None	+4,877
		Rio Grande (East Overbank).	At limit of detailed study	None	+4,832
			Approximately 37,200 feet above limit of detailed study.	*4,860	+4,860
		Rio Grande (West Split Flow).	Approximately 2,000 feet downstream of Village of Bosque Farms corporate limits.	*4,860	+4,860
			Approximately 51,500 feet above limit of detailed study, at the northern County boundary.	*4,873	+4,873
		Rio Grande (East Split Flow).	Approximately 2,000 feet downstream of Village of Bosque Farms corporate limits.	*4,860	+4,860
			Approximately 52,700 feet upstream of limit of detailed study, at border of the Isleta Indian Reservation.	*4,873	+4,873
NOTE: To convert from NGVD to NAVD, add 2.5 feet.					
Maps are available for inspection at the Valencia County Engineering Office, 444 Luna Avenue, Los Lunas, New Mexico.					
Send comments to The Honorable Frank A. Gurule, Chairman, Valencia County Board of Commissioners, P.O. Box 1119, 444 Luna Avenue, Los Lunas, New Mexico 87031.					
North Dakota	Dickinson (City) Stark County.	Heart River	Approximately 1,000 feet downstream of Ninth Avenue Southeast bridge.	*2,830	*2,381

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,000 feet upstream of Ninth Avenue Southeast bridge.	*2,382	*2,383
			Just downstream of Dickinson Dam	*2,396	*2,397
		Dickinson Drainage Ditch	Approximately 500 feet downstream of Burlington Northern Railroad.	*2,397	*2,397
			Just upstream of Interstate Highway 94	None	*2,448
			At 21st Street West	None	*2,456
		East Tributary to the Heart River.	At confluence with the Heart River	None	*2,363
			At Tenth Avenue East	None	*2,474
		Tributary A to East Tributary to the Heart River.	At confluence with East Tributary to the Heart River.	None	*2,432
			At U.S. Highway 10	None	*2,432
		Tributary B to East Tributary to the Heart River.	At confluence with East Tributary to the Heart River.	None	*2,444
			At 21st Street East	None	*2,478

Maps are available for inspection at the City of Dickinson Public Works Department, 615 West Broadway, Dickinson, North Dakota.

Send comments to The Honorable Fred Gengler, Commission President, City of Dickinson, P.O. Box 1037, Dickinson, North Dakota 58602–1037.

Oklahoma	Bixby (City) Tulsa County.	Posey Creek	At confluence of Posey Creek Tributary	None	*611
		Little Haikey Creek	Just upstream of Garnett Road	*623	*624
			Just downstream of 111th Street South	*631	*630

Maps are available for inspection at the City of Bixby City Hall, 116 West Needles Street, Bixby, Oklahoma.

Send comments to The Honorable Joe Williams, Mayor, City of Bixby, 116 West Needles Street, Bixby, Oklahoma 74008.

	Broken Arrow (City) Tulsa County	Adams Creek	At the centerline of 51st Street South	*586	*588
			100 feet upstream of 193rd East Avenue	*664	*664
		Broken Arrow Creek	Just upstream of 101st Street South	None	*651
			500 feet upstream of 101st Street South	None	*652
		Covington Creek (Adams Creek Tributary B).	At confluence with Adams Creek	*598	*598
			200 feet upstream of East 81st Street South.	*625	*627
		Covington Creek Tributary (Adams Creek Tributary B–1).	1,200 feet upstream of confluence with Covington Creek (Adams Creek Tributary B).	*611	*617
		Lone Star Creek (Adams Creek Tributary D).	7,260 feet upstream of confluence with Adams Creek.	None	*698
		School Creek (Adams Creek Tributary C).	2,300 feet downstream of 236th East Avenue.	*604	*605
			150 feet downstream of 236th East Avenue.	*609	*608
		Timber Creek (Adams Creek Tributary A).	700 feet upstream of East 71st Street South.	*620	*619
			4,800 feet upstream of South 257th East Avenue.	None	*662

Maps are available for inspection at the City of Broken Arrow City Hall, 115 East Commercial Street, Broken Arrow, Oklahoma.

Send comments to The Honorable Jim Reynolds, Mayor, City of Broken Arrow, City Hall, 115 East Commercial Street, Broken Arrow, Oklahoma 74013.

	Mayes County (Unincorporated Areas).	Pryor Creek	Approximately 1 mile downstream of Elliot Street.	None	*594
			Approximately 7,000 feet upstream of County Road.	None	*615
		Pryor Creek Tributary A and Pryor Creek Backwater.	Approximately 500 feet upstream of Elliot Street.	None	*600
			Approximately 1,600 feet upstream of Elliot Street at the Mayes County corporate limit.	None	*600

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Mayes County Commissioner's Office, One Court Street, Pryor, Oklahoma.					
Send comments to The Honorable Jerry Montgomery, Chairman, Mayes County Board of Commissioners, P.O. Box 36, Pryor, Oklahoma 74362.					
	Osage County (Unincorporated Areas).	Horsepin Creek	Approximately 1,400 feet downstream of Southern Pacific Railroad.	*637	*637
			Approximately 310 feet downstream of Southern Pacific Railroad.	*637	*638
			Approximately 1,060 feet upstream of Southern Pacific Railroad.	*637	*643
Maps are available for inspection at 628 Kinnekah, Oklahoma.					
Send comments to The Honorable Scott Hill, Chairman, Osage County Commissioners, P.O. Box 87, Pawhuska, Oklahoma 74056.					
	Pryor Creek (City) Mayes County.	Pryor Creek Tributary A and Pryor Creek Backwater.	Approximately 1,600 feet upstream of Elliot Street at the City of Pryor Creek corporate limits.	None	*600
			Approximately 75 feet upstream of 14th Street.	None	*619
		Pryor Creek	Approximately 5,800 feet upstream of Elliott Street.	None	*600
			Approximately 400 feet downstream of confluence of Salt Branch Creek at the City of Pryor Creek corporate limits.	None	*611
		Park Branch Creek and Pryor Creek Backwater.	Approximately 2,225 feet downstream of MKT Railroad.	None	*605
			Approximately 200 feet upstream of Ora Street.	None	*630
		Pryor Creek Tributary B ...	Approximately 2,300 feet downstream of First Street.	None	*606
			Approximately 1,520 feet upstream of County Road.	None	*620
		Park Branch Creek Tributary A.	At confluence of Park Branch Creek	None	*616
			Approximately 130 feet upstream of Graham Avenue.	None	*623
Maps are available for inspection at the City of Pryor Creek City Hall, 6 North Adair, Pryor Creek, Oklahoma.					
Send comments to The Honorable Carl Curry, Mayor, City of Pryor Creek, P.O. Box 1167, Pryor, Oklahoma 74361.					
	Sand Springs (City) Tulsa County.	Anderson Creek	Just upstream of 56th Street South	*735	*736
			At Creek County boundary	*745	*744
Maps are available for inspection at the City of Sand Springs Public Works Building, 216 North Lincoln, Sand Springs, Oklahoma.					
Send comments to The Honorable Tom Ferguson, Mayor, City of Sand Springs, 100 Broadway Avenue, Sand Springs, Oklahoma 74063.					
	Skiatook (Town) Tulsa County.	Bird Creek	At intersection of 186th Street and Cincinnati Avenue.	None	*650
			1,000 feet west along 116th Street North from its intersection with Peoria Avenue.	None	*618
		Hominy Creek	At North 25th West Avenue (Extended) ...	None	*626
		Rock Creek	At the County Road, approximately 5,000 feet upstream of confluence with Hominy Creek.	None	*625
		South Fork Horse Creek ..	At confluence with Bird Creek	*633	*633
			At Maple Street	*633	*634
			At the downstream side of Southern Pacific Railroad.	None	*644
Maps are available for inspection at the Town of Skiatook Municipal Building, 100 North Broadway, Skiatook, Oklahoma.					
Send comments to The Honorable Don Branscum, Mayor, Town of Skiatook, Municipal Building, 110 North Broadway, Skiatook, Oklahoma 74070.					
	Tulsa (City) Tulsa County.	Mingo Creek	100 feet upstream of 56th Street North ...	*591	*589
		Bird Creek	At 46th Street North (State Highway 266)	*583	*584
		Spunky Creek	2,150 feet downstream of 21st Street South.	None	*631
			100 feet upstream of 193rd East Avenue	None	*665

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			3,800 feet upstream of 193rd East Avenue.	None	*668
		Harlow Creek	3,450 feet upstream of Edison Street	None	*663
			5,850 feet upstream of Edison Street	None	*669
		Harlow Creek Tributary	4,825 feet upstream of Edison Street	None	*688
			6,750 feet upstream of Edison Street	None	*699
Maps are available for inspection at the Stormwater Design Office, 2317 South Jackson, Suite No. 302, Tulsa, Oklahoma.					
Send comments to The Honorable M. Susan Savage, Mayor, City of Tulsa, 200 Civic Center, Tulsa, Oklahoma.					
	Tulsa County (Unincorporated Area).	Anderson Creek	700 feet upstream of confluence with Fisher Creek.	*658	*660
			Approximately 3,700 feet upstream of 56th Street (at Creek County boundary).	*745	*744
		Hominy Creek	400 feet downstream of Texas and Pacific Railroad.	*623	*624
		Euchee Creek	350 feet upstream of U.S. Highway 64	*652	*654
			Just upstream of Willow Street	*679	*680
			11,500 feet upstream of mouth (at Tulsa-Osage County boundary).	*689	*690
Maps are available for inspection at the Tulsa County Annex Building, 633 West Third, Room 140, Tulsa, Oklahoma.					
Send comments to The Honorable John Selph, Chairman, Tulsa County Commissioners, 500 South Denver, Tulsa, Oklahoma.					
Oregon	Florence (City)	Siuslaw River	At confluence of Munsel Creek	*11	*10
	Lane County		At U.S. Highway 101 bridge	*11	*10
Maps are available for inspection at the City of Florence Planning Department, 250 Highway 101, Florence, Oregon.					
Send comments to The Honorable Roger McCorkle, Mayor, City of Florence, P.O. Box 340, Florence, Oregon 97439.					
	Lane County and Incorporated Areas.	Salmon Creek	At Williamette Highway Bridge	*1,164	*1,162
			South of south levee at railroad spur	*1,197	*1,195
			South of south levee at Salmon Creek Road.	*1,215	#1
Maps are available for inspection at the Lane County Planning Department, Public Service Building, 125 East Eighth Avenue, Eugene, Oregon.					
Send comments to The Honorable Steve Cornacchia, Chairperson, Lane County Board of Supervisors, Public Services Building, 125 East Eighth Avenue, Eugene, Oregon 97401.					
Texas	Chambers County (Unincorporated Areas).	Oyster Bayou	Just upstream of Lone Star Canal	None	*22
			Approximately 2,500 feet downstream of State Highway 65.	None	*23
			Approximately 2,000 feet upstream of State Highway 65.	None	*24
			Approximately 7,000 feet upstream of State Highway 65.	None	*26
Maps are available for inspection at the Chambers County Engineer's Office, 201 Airport Road, Anahuac, Texas.					
Send comments to The Honorable Jimmy Sylvia, Chambers County Judge, P.O. Box 939, Anahuac, Texas 77514.					
Wyoming	East Thermopolis (Town).	Bighorn River	At the northwesternmost corporate boundary, approximately 500 feet downstream of Broadway Street.	None	*4,320
	Hot Springs County		At the southwest corporate boundary, approximately 720 feet upstream of Broadway Street.	None	*4,323
Maps are available for inspection at the Town of East Thermopolis Town Hall, 112 East Warren, Thermopolis, Wyoming.					
Send comments to The Honorable Lee E. Sheridan, Mayor, Town of East Thermopolis, 112 East Warren, Thermopolis, Wyoming 82443.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–23068 Filed 8–26–98; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–96–41; FHWA–97–2289]

RIN 2125–AE05

Public Meeting to Discuss the Development of the North American Standard for Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA is announcing a public meeting concerning the development of the North American Standard for Protection Against Shifting or Falling Cargo. The meeting will include a review of the most recent version of the North American Standard for Protection Against Shifting or Falling Cargo and a discussion of issues related to the adoption of the guidelines by jurisdictions throughout North America.

DATES: The meeting will be held on October 1, 1998. The meeting will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Rochester Hotel, 125 East Main Street in Rochester, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su—docs.

Background

On October 17, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) concerning the development of the North American Standard for Protection Against Shifting or Falling Cargo (61 FR 54142). The ANPRM indicated that the FHWA is considering proposing amendments to its regulations concerning cargo securement requirements for commercial motor vehicles engaged in interstate commerce. Specifically, the agency is considering adopting new cargo securement rules that will be based upon the results of a multi-year comprehensive research program to evaluate current regulations and industry practices. The FHWA requested comments on the process to be used in developing the cargo securement guidelines.

Standard Development Process

The preliminary efforts at developing the North American Standard for Protection Against Shifting or Falling Cargo are currently being managed by a drafting group. The drafting group is developing a model set of cargo securement guidelines based upon the results from the multi-year research program. Membership in the drafting group includes representatives from the FHWA, Transport Canada, the Canadian Council of Motor Transport Administrators (CCMTA), the Ontario Ministry of Transportation, the Quebec Ministry of Transportation—Ontario and Quebec are conducting most of the research—and the Commercial Vehicle Safety Alliance (CVSA).

The meeting on October 1 is the last in a series of public meetings and is intended to serve as part of a process for completing the guidelines. The meeting will involve a review of the work completed to date by the drafting group and discussions concerning the process for each of the jurisdictions in North America to adopt the guidelines. The meeting is open to all interested parties. This process is intended to ensure that all interested parties have an opportunity to participate in the development of the guidelines, and to identify and consider the concerns of the Federal, State, and Provincial governments, carriers, shippers, industry groups, and associations as well as safety advocacy groups and the general public.

For individuals and groups unable to attend the meeting, copies of the draft standard may be obtained, free of charge, by contacting Mr. Larry W. Minor at the address and telephone number listed at the beginning of this notice. Further, the CCMTA has posted the complete draft standard and related information (e.g., minutes of the previous public meetings, information about ordering copies of the cargo securement research reports, etc.) on the INTERNET. The website is:

http://www.ab.org/ccmta/ccmta.html.

The FHWA will discuss the comments submitted to the docket in response to the 1996 ANPRM when it publishes a notice of proposed rulemaking.

Meeting Information

The meeting will be held on October 1, 1998, at the Hyatt Regency Rochester Hotel, 125 East Main Street in Rochester, New York. The meeting is scheduled from 9:00 a.m. to 5:00 p.m. and is being held in connection with the Commercial Vehicle Safety Alliance's 1998 Fall Conference. Attendance for the cargo securement meeting is free of charge and open to all interested parties. However, anyone interested in attending the sessions and committee meetings of the CVSA's 1998 Fall Conference must register with the CVSA and pay the appropriate registration fee. For further information about registration for other sessions or meetings of the CVSA's 1998 Fall Conference please contact the CVSA at (301) 564–1623.

The FHWA notes that since the CVSA's 1998 Fall Conference is being held at the Hyatt Regency Rochester Hotel, the availability of guest rooms at the hotel is very unlikely. Therefore, those needing hotel accommodations should attempt to make reservations at other hotels in the vicinity.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued: August 20, 1998.

Jill L. Hochman,

Acting Associate Administrator for Motor Carriers.

[FR Doc. 98–22952 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

Public Meeting to Discuss the Development of In-Service Brake Performance Standards for Commercial Motor Vehicles Inspected With Performance-Based Brake Testers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA is announcing a public meeting to discuss the development of commercial motor vehicle brake force regulations that could be enforced by Federal and State officials using performance-based brake testing technologies. The FHWA is nearing the completion of a research program to evaluate certain performance-based brake testing technologies, including roller dynamometers, flat-plate testers, breakaway torque brake testers, an on-board decelerometer, and an infrared brake temperature measurement system. Currently performance-based brake testers may be used in commercial motor vehicle inspections but only as screening and sorting devices because there are no Federal regulations that make reference to brake force measurements as a means of determining whether a vehicle has adequate braking capability. The recommendations from the researchers would, if adopted by the FHWA, enable Federal and State officials to use performance-based brake testers as both screening tools and enforcement tools when vehicles with inadequate braking capability are identified. The purpose of the public meeting is to provide interested parties an opportunity to review and comment on the researchers' recommendations.

DATES: The meeting will be held on October 2, 1998. The meeting will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Rochester Hotel, 125 East Main Street in Rochester, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009; Ms. Kate Hartman, Commercial Vehicle Operations Division, Office of Motor Carrier Safety and Technology, (202) 366–0950, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., *e.t.*, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su__docs.

Background

In 1993, the FHWA initiated a research program to evaluate various performance-based brake testing technologies for use on commercial motor vehicles. The purpose of the program was to determine, through field-test data collection, if performance-based brake inspection technologies could improve or assist with the throughput and accuracy of the current inspection techniques which involve visual examination of components, measurement of push-rod travel on air-braked vehicles, and listening for air leaks. Following the completion of the first task of the program, in which various performance-based technologies were analyzed, several of the systems were selected for evaluation in a roadside field-test inspection program.

During the field tests, inspections were performed using both visual and performance-based methods to compare their ability to detect vehicle brake defects. In particular, a Commercial Vehicle Safety Alliance Level 4 inspection (consisting of the brake and tire portion of a Level 1 inspection) was conducted in addition to a performance-based brake test. The dual inspections were performed by State officials in each of eight States that volunteered to participate in the field test program.

The data collected from these dual inspections were tabulated and correlations were sought between: (1) Violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and the North American Uniform Vehicle Out-of-Service Criteria used by officials in the United States, Canada, and Mexico, and (2) various pass/fail criteria used by manufacturers of performance-based technology. In addition to the performance-based brake ''failure'' information, data relating to the operational characteristics of each prototype machine were also collected and evaluated. These data included setup and tear down times, vehicle inspection times, maintenance requirements, user friendliness, calibration procedures and results, operator skill-level requirements and information to generate a cost-benefit analysis. A key source of data was the interviews with State inspectors.

The preliminary findings from the first phase of the prototype brake testing program are documented in an interim report, ''Evaluation of Performance-Based Brake Testing Technologies,'' December 1995, FHWA–MC–96–004. A copy of this report may be obtained by contacting one of the individuals listed at the beginning of this notice. The interim report presents findings based upon approximately one year of data from roller dynamometers used in Colorado and Ohio, and a flat plate tester in Minnesota.

Subsequent to the publication of the interim report, West Virginia participated in the field test evaluation of a roller dynamometer. Wisconsin is collecting data on a flat-plate tester, and Maryland and Nevada are collecting data on breakaway torque testers. Connecticut participated in the testing of a roller dynamometer for several months but elected to discontinue its involvement in the research program. The final report has been submitted to the FHWA by the researchers and will be published by the FHWA later this year.

Determination of Eligibility for MCSAP Funding

On April 1, 1996, the FHWA issued a memorandum advising agency staff that two specific performance-based brake testing machines are eligible for funding under the Motor Carrier Safety Assistance Program (MCSAP). On March 11, 1997, the FHWA issued another memorandum announcing the eligibility for funding of a third performance-based brake testing machine. The memoranda indicated that the devices are prototypes, and are approved for screening and sorting purposes only. This means that States may request MCSAP funding to purchase one of the approved brake testers for use in screening or sorting vehicles at inspection cites.

On December 8, 1997, the FHWA held a public meeting at the National Highway Traffic Safety Administration's (NHTSA) Vehicle Research and Test Center to discuss the development of functional specifications for performance-based brake testers purchased with Federal funds through the MCSAP. A notice announcing the meeting was published in the **Federal Register** on November 13, 1997 (62 FR 60817). The FHWA indicated that the

final version of the functional specifications would be used by the States as guidelines to determine whether the purchase of a specific brake tester would be an eligible expense item under the MCSAP.

On June 5, 1998, the FHWA published a notice in the **Federal Register** requesting public comment on the functional specifications (63 FR 30678). The comments from the participants in the December 8, 1997, public meeting were incorporated to the extent practicable prior to the publication of the June 5, 1998, notice. The FHWA will discuss the comments received and present the final version of the function specifications in a separate notice to be published in the **Federal Register** at a later date.

Development of In-Service Brake Performance Standards

Currently, vehicles that fail a brake performance test must be inspected to determine the reason for the poor test results. Motor carriers cannot be cited for brake-related violations of the FMCSRs solely on the basis of the results from a performance-based brake tester because the current regulations do not make reference to the specific aspects of brake performance that are evaluated by the brake testers. Therefore citations are based upon the specific defects or deficiencies found during the in-depth inspection.

The FHWA is considering the development of pass/fail criteria for braking force that could be enforced by Federal and State officials using performance-based brake testing technologies. As inspection criteria or regulations are developed through the rulemaking process, the use of the performance-based brake testing machines could be expanded to include enforcement of the new Federal brake performance standards. The new standards would be an alternative to the stopping distances from 32.2 kilometers per hour (20 miles per hour) currently specified in 49 CFR 393.52 but rarely enforced by Federal and State officials because of difficulties in performing such tests at roadside. If brake force standards are developed through the rulemaking process, Federal, State, and local government inspectors would be able to issue citations based upon the output from the brake testers. The public meeting will provide interested parties with the opportunity to discuss with the FHWA and the researchers, recommendations for brake force standards.

In addition to a discussion about brake force standards, there will be a presentation and discussion of the results from recently completed round-robin tests of performance-based brake testers. During the tests, a variety of performance-based brake testers were used to evaluate the same test vehicles, a five-axle tractor-semitrailer combination vehicle and a two-axle single-unit truck. The results from the round-robin tests will enable the researchers and the FHWA to make direct comparisons between the force measurements from certain brake testers and stopping distances from 32.2 km/hr, and help resolve concerns about using the brake testers for enforcement purposes.

List of Subjects in 49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: August 20, 1998.

Jill L. Hochman,

Acting Associate Administrator for Motor Carriers.

[FR Doc. 98–22951 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082098B]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings, request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Amendment 12 to the Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass; Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP. These amendments are intended to comply with the new and revised national standards and other required provisions of the Sustainable Fisheries Act (SFA).

DATES: Written comments on the amendments will be accepted until September 25, 1998. The public hearings are scheduled to be held September 8 and 9, 1998, 6 to 10 p.m.

ADDRESSES: Send comments to the Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904.

The hearings will be held in Rhode Island, New York, New Jersey, Maryland, and Virginia. See **SUPPLEMENTARY INFORMATION** for specific times and locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Christopher Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council, 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION:

Background

These FMP amendments are proposed to bring the Summer Flounder, Scup, and Black Sea Bass FMP; the Atlantic Mackerel, Squid, and Butterfish FMP; and the Atlantic Surf Clam and Ocean Quahog FMP into compliance with the new and revised national standards and other required provisions of the SFA. Specifically, these amendments propose to revise the overfishing definitions for summer flounder, scup, black sea bass, Atlantic mackerel, *Loligo pealei*, *Illex illecebrosus*, butterfish, surf clam and ocean quahog; identify essential habitat for these species; and address the new and revised national standards of the SFA relative to existing management measures. These amendments also propose to add a framework adjustment procedure that would allow the Council to add or modify management measures through a streamlined public review process. In addition, Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP proposes to implement an operator permit requirement. Also, Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP proposes to include vessel length, weight, and horsepower restrictions for domestic harvesting vessels in the Atlantic mackerel fishery.

Public Hearings

The dates and locations of the hearings are scheduled as follows:

1. Tuesday, September 8, 1998, 6–10 p.m.—Comfort Inn, 1940 Post Road, Warwick, RI;

2. Tuesday, September 8, 1998, 6–10 p.m.—Quality Inn Lake Wright, 6280 Northampton Boulevard, Norfolk, VA;

3. Wednesday, September 9, 1998, 6–10 p.m.—Holiday Inn MacArthur Airport, 3845 Veterans Memorial Highway, Ronkonkoma, NY;

4. Wednesday, September 9, 1998, 6–10 p.m.—Cape May Extension Office, Dennisville Road, Cape May Courthouse, NJ; and

5. Wednesday, September 9, 1998, 6–10 p.m.—Sheraton Fountainebleau,

10100 Coastal Highway, Ocean City, MD.

The hearings will be tape recorded with the tapes filed as the official transcript of the hearings.

Special Accommodations

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council at least 5 days prior to the hearing date (see **ADDRESSES**).

Authority: 16 U.S.C. *et seq.*

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23013 Filed 8–24–98; 3:17 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 166

Thursday, August 27, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on October 15, 1998, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to discuss civil rights issues and review the special education draft report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 20, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–23058 Filed 8–26–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on September 15, 1998, at the Benedict College, Student Union Building, Taylor and Oak Streets, Columbia, South Carolina. The purpose of the meeting is to hold a conference discussing the recently passed South Carolina Education Accountability Act of 1998.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 20, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–23059 Filed 8–26–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on September 19, 1998, at the Hilton Inn, 800 N. Poplar, Casper, Wyoming 82601. The purpose of the meeting is to discuss the project on minority student dropouts from the Wyoming public secondary schools, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 20, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–23060 Filed 8–26–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on September 23, 1998, and reconvening at 9:00 a.m. and adjourning at 1:00 p.m. on September 24, 1998, at the Statehouse Convention & Conference Center, #1 Statehouse Plaza, Little Rock, Arkansas 72201. The Committee will conduct a factfinding meeting to determine whether the State needs a civil rights enforcement agency.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–23057 Filed 8–26–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 8:00 p.m. September 10,

1998, at the Office of the State Treasurer, Rhode Island State House, Providence, Rhode Island 02903. The purpose of the meeting is to (1) review and vote to accept a summary of the transcript of the Committee's consultation that was held on February 9, 1998, on the topic ''An Examination of the Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island,'' and (2) plan future events.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–23056 Filed 8–26–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke three antidumping duty orders in part.

EFFECTIVE DATE: August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on silicon metal from Brazil, professional electric cutting tools from Japan, and polyethylene terephthalate film (PET Film) from South Korea. The request for revocation in part with respect to PET Film from South Korea was inadvertently omitted from the previous initiation notice (63 FR 40258, July 28, 1998).

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 1998.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Silicon Metal, A–351–806	7/1/97–6/30/98
Companhia Brasileira Carbureto De Calcio	
Companhia Ferroligas Minas Gerais-Minasligas	
Eletrosilex Belo Horizonte	
Ligas de Aluminio S.A.	
Rima Industrial, S/A	
Italy: Certain Pasta, A–475–818	7/1/97–6/30/98
Commercio-Rappresentanze-Export S.r.l.	
F. Divella Molino e Pastificio	
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	
Industrie Alimentari Molisane S.r.l.	
La Molisana Industrie Alimentari S.p.A.	
N. Puglisi & F. Industria Paste Alimentari S.p.A.	
Pastificio Antonio Pallante S.r.l.	
Pastificio Fabianelli S.p.A.	
Pastificio Maltagliati S.p.A.	
Pastificio Riscossa F.lli Mastromauro S.r.l.	
Rummo S.p.A. Pastificio e Molino	
Japan: Electric Cutting Tools, A–588–823	7/1/97–6/30/98
Makita Corporation	
Thailand: Canned Pineapple, A–549–813	7/1/97–6/30/98
Dole Thailand	
Kuiburi Fruit Canning Company Limited	
Malee Sampran Public Company, Ltd.	
Siam Food Products Company Ltd.	
Siam Fruit Canning (1988) Co. Ltd.	
The Thai Pineapple Public Co., Ltd.	
Vita Food Factory (1989) Co. Ltd.	
Thailand: Butt-Weld Pipe Fittings, A–549–807	7/1/97–6/30/98
Thai Benkan Co., Ltd.	
The People's Republic of China: Persulfates*, A–570–847	12/27/96–6/30/98
FMC Corporation	
Guangdong Petroleum Chemical Import & Export Corp.	
Sinochem Jiangsu Wuxi Import & Export Corp.	

	Period to be reviewed
Shanghai Ai Jian Import & Export Corp.	

*If one of the above named companies does not qualify for a separate rate, all other exporters of sebacic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

The People's Republic of China: Sebacic Acid*, A–570–825	7/1/97–6/30/98
Guangdong Chemicals Import & Export Corporation	
Sinochem International Chemicals Company	
Sinochem Jiangsu Import & Export Corporation	
Tianjin Chemicals Import & Export Corporation	

*If one of the above named companies does not qualify for a separate rate, all other exporters of persulfates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Turkey: Certain Pasta, A–489–805	7/1/97–6/30/98
Maktas Makarnacilik ve Tic. A.S.	
Pastavilla Kartal Makarnacilik Sanayi ve Ticaret A.S.	
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/97–6/30/98
Imperial Chemical Industries PLC	
Countervailing Duty Proceedings	
Italy: Certain Pasta, C–475–819	1/1/97–12/31/97
Delverde, SrL	
Pastificio Maltagliati S.p.A.	
Pastificio Riscossa F.lli Mastromauro S.r.l.	
Tamma Industrie Alimentari, SrL	
Suspension Agreements	
None	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, we will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 21, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–23090 Filed 8–26–98; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Iron Construction Castings from Canada: Notice of Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Recission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: August 27, 1998.

SUMMARY: On April 24, 1998, the Department of Commerce (the Department) published in the **Federal Register** (63 FR 20378) a notice announcing the initiation of an administrative review of the antidumping duty order on iron construction castings from Canada, covering the period March 1, 1997 through February 28, 1998, and one manufacturer/exporter of the subject merchandise, Canada Pipe Company Limited, and its subsidiaries, Bibby Ste. Croix, LaPerle Foundry, Fonderie Grand Mere, and Clow Canada. This review has now been rescinded as a result of Canada Pipe Company Limited's withdrawal of its request for an administrative review.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur, Office of AD/CVD Enforcement, Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5346.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1998, Canada Pipe Company Limited, a manufacturer/exporter of the subject merchandise, requested an administrative review of the antidumping duty order on iron construction castings from Canada in accordance with 19 CFR 351.213(b). On April 24, 1998, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period March 1, 1997 through February 28, 1998. On July 31, 1998, Canada Pipe Company Limited withdrew its request for this review.

Recission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that a party may withdraw its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or at a later date if the Department determines that such an

extended time is reasonable. Canada Pipe Company Limited withdrew its request for review after the 90 day period. However, the Department has determined to grant the request to rescind the review because Canada Pipe Company Limited was the only party to request the review, and withdrew its request shortly after the 90 day period; no party objected to the recission; and it otherwise is reasonable to rescind the review based on Canada Pipe Company Limited's withdrawal at this time.

This determination is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: August 21, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 98–23091 Filed 8–26–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.080498D]

Caribbean Fishery Management Council and National Marine Fisheries Service; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will convene public hearings on its draft Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans of the U.S. Caribbean (draft Generic EFH Amendment). The Council is developing its EFH Generic Amendment to address EFH-related requirements of the Magnuson-Steven Fishery Conservation and Management Act (Magnuson-Stevens Act).

NMFS is developing an EFH recommendation to the Council on its Generic EFH Amendment in accordance with the requirements of the Magnuson-Stevens Act. The NMFS EFH recommendation to the Council will involve NMFS' review of, and comments on, the Council's draft Generic EFH Amendment. The NMFS recommendation to the Council will be available for public distribution on August 31, 1998, and also will be available to the public at the Council's hearings. NMFS will hold a public hearing on its draft EFH recommendation immediately following the Council's public hearing of September 2, 1998, in St. Croix, U.S.V.I.

DATES: Written comments on the Council's draft Generic EFH Amendment will be accepted through September 15, 1998. Written comments on the NMFS draft EFH recommendations will be accepted through September 15, 1998. The Council's public hearings will be held on August 31, and on September 1, 2, 3, and 8, 1998. NMFS will hold a public hearing on its draft EFH recommendation on September 2, 1998 following the Council's public hearing in St. Croix, U.S.V.I.

ADDRESSES: The hearings will be held in the U.S.Virgin Islands and in Puerto Rico. For specific hearing locations and times, see **SUPPLEMENTARY INFORMATION**. Copies of the Council's draft Generic EFH Amendment can be obtained by calling the Council at (787) 766–5926. Written comments on the draft Generic EFH Amendment should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; fax (787) 766–6239. Copies of the NMFS draft EFH recommendation can be obtained by calling the Habitat Conservation Division, NMFS Southeast Region, at (727) 570–5317. Written comments on the NMFS draft EFH recommendation should be addressed to: Habitat Conservation Division, NMFS Southeast Region, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432. Comments should be marked to indicate ''Draft EFH Recommendation to CFMC.''

FOR FURTHER INFORMATION CONTACT: For information on the draft Generic EFH Amendment, contact the Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone (787) 766–5926; fax (787) 766–6239. For information on the NMFS draft EFH recommendation, contact the Habitat Conservation Division, NMFS Southeast Region, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432; telephone (727) 570–5317.

SUPPLEMENTARY INFORMATION: The Council will hold six public hearings on a draft Generic EFH Amendment addressing EFH in the U.S. Caribbean. The Generic EFH Amendment would amend all of the Council's approved and implemented fishery management plans (FMPs) to address the EFH requirements of the Magnuson-Stevens Act. The description and identification of EFH for these FMPs is mandated by sections 303(a)(7) and 305 (b) of the Magnuson-Stevens Act. The following is a summary of the draft Generic EFH Amendment:

1. EFH is identified and described based on areas where various life stages of the 17 selected managed species and the coral complex commonly occur. The selected species are: Nassau grouper, *Epinephelus striatus*, red hind, *Epinephelus guttatus*, coney, *Epinephelus fulvus*, yellowtail, *Ocyurus chrysurus*, mutton, *Lutjanus analis*, school master, *Lutjanus apodus*, grey snapper, *Lutjanus griseus*, silk snapper, *Lutjanus vivants*, butterfly fish, *Chaetodon sprattus*, squirrel fish, *Holocentrus ascensionis*, white grunt, *Haemulon plumber*, queen triggerfish, *Balistes vetula*, tilefish, *Malacanthus plumieri*, redtail parrot fish, *Sparisoma chrysopterum*, trunk fish, Lactophrys *quadricornis*, spiny lobster, *Panulirus argus*, and queen conch, *Strombus gigas*.

2. The selected species represent some of the key species under management by the Council. Collectively, these species commonly occur throughout all the marine and estuarine waters of the U.S. Caribbean. EFH for the remaining managed species will be addressed in future FMP amendments, as appropriate.

3. EFH is defined as everywhere that the above managed species commonly occur. Because these species collectively occur in all habitats of the U.S. Caribbean, the EFH includes all waters and substrates (mud, sand, shell, rock, and associated biological communities), including subtidal vegetation (seagrasses and algae) and adjacent intertidal vegetation (wetland and mangroves). Therefore, EFH includes virtually all marine waters and substrates (mud, shell, rock, coral reefs, and associated biological communities) from the shoreline to the seaward limit of the EEZ.

4. Threats to EFH from fishing and nonfishing activities are identified.

5. Whenever possible, options to conserve and enhance EFH are provided and research needs are identified.

6. No management measures and, therefore, no regulations are proposed at this time. Fishing-related management measures to minimize any identified impacts are deferred to future amendments when the Council has the information necessary to decide if the measures are practicable.

Hearings

The Council hearings will be held in the following locations and times:

Monday, August 31, 1998, from 7–10 p.m. at the Legislature Building in Cruz Bay, St. John, U.S.V.I.;

Tuesday, September 1, 1998, from 7–10 p.m., at the Legislature Building in Charlotte Amalie, St. Thomas, U.S.V.I.;

Wednesday, September 2, 1998, from 7–10 p.m., at the Conference Room of the Caravelle Hotel, in St. Croix. U.S.V.I.;

Thursday, September 3, 1998, from 7–10 p.m., at the Conference Room of the Holiday Inn Hotel in Mayaguez, Puerto Rico (Holiday Inn Hotel address is 2701 Highway Number 2, Mayaguez, Puerto Rico 00680);

Tuesday, September 8, 1998, from 1–3 p.m., at the Casa Alcaldia of Fajardo, Fajardo, Puerto Rico; and

Tuesday, September 8, 1998, from 7–10 p.m., at the Travelodge Hotel in Isla Verde, Puerto Rico (Travelodge Hotel address is 1313 Isla Verde Avenue, Carolina, Puerto Rico).

NMFS is developing an EFH recommendation to the Council in accordance with the requirements of the Magnuson-Stevens Act. The NMFS EFH recommendation to the Council involves a review of, and comments on, the Council's draft Generic EFH Amendment. The NMFS draft recommendation to the Council will be available for public distribution on August 31, 1998, and will be available at the Council's public hearings. Copies may be requested from the NMFS Habitat Conservation Division (see **ADDRESSES**). Written comments on the NMFS draft EFH recommendation may be sent to the NMFS Habitat Conservation Division, Southeast Region (see **ADDRESSES**). A public hearing will be held on the draft NMFS EFH recommendation immediately following the Council's September 2, 1998, public hearing in St. Croix, U.S.V.I.

Special Accommodation

The hearings are open to the public, and will be conducted in English. They are physically accessible to people with disabilities. For more information or requests for sign language interpretation or other auxiliary aids, please contact Mr. Miguel A. Rolon at the council at least 5 days prior to the meeting dates (see **FOR FURTHER INFORMATION CONTACT**).

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23015 Filed 8–24–98; 2:48 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081298B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1169, 1175) and a modification to a scientific research permit (990); Issuance of scientific research permits (1126, 1156) and a modification to a scientific research permit (1116)

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: U.S. Forest Service, Mt. Hood National Forest at Sandy, OR (MHNF)(1169) and U.S. Forest Service, Gifford Pinchot National Forest at Vancouver, WA (GPNF)(1175); NMFS has received an application for a modification to an existing permits from the U.S. Fish and Wildlife Service, California State Office, Sacramento, CA (FWS)(990); NMFS has issued permits to: Washington Department of Fish and Wildlife at Olympia, WA (WDFW)(1126) and the U.S. Environmental Protection Agency (EPA) (1156); and NMFS has issued a modification to a scientific research permit to Public Utility District No. 1 of Douglas County (PUDDC)(1116).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before September 28, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permit 990: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permits 1116, 1126, 1156, 1169, and 1175: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permit 990: Tom Hablett, Protected Resources Division, (707–575–6066).

For permit 1126: Robert Koch, Portland, OR (503–230–5424).

For permits 1116, 1156, 1169, and 1185: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of these permits and modifications, as required by the ESA, was based on a finding that such permits, modifications: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits and modifications, were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*Oncorhynchus kisutch*), and Steelhead trout (*Oncorhynchus mykiss*).

To date, protective regulations for threatened lower Columbia River (LCR) steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened LCR steelhead. The initiation of a 30-day public comment period on these applications, including their proposed takes of threatened LCR steelhead, does not presuppose the contents of the eventual protective regulations.

New Applications Received

MHNF (1169) requests a 5-year permit for a direct take of adult and juvenile, threatened, LCR steelhead associated with four routine fish distribution and

monitoring research studies. The proposed studies will produce essential stock status data needed to manage programs for the recovery of listed fish. Study 1 is located in the Clackamas River and involves adult spawning surveys, juvenile trapping and tagging work as well as juvenile presence/absence surveys using snorkeling and electrofishing techniques. Study 2 is located in the Hood River Ranger District and involves snorkel distribution surveys as well as trapping and tagging juveniles. Study 3 is located in the Zig Zag Ranger District and involves adult spawning surveys, juvenile trapping, electrofishing, tagging and a lethal take of juveniles for genetic analysis. Study 4 involves presence/absence surveys in the Mt Hood National Forest. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

GPNF (1175) requests a 5-year permit for a direct take of juvenile, threatened, LCR steelhead associated with two research studies. The scientific research will provide necessary information to assess the impact of proposed land use activities on ESA-listed fish. The purpose of Study 1 is to conduct fish distribution, fish species presence/absence, and habitat quality surveys on streams across the forest. The purpose of Study 2 is to evaluate the biological benefits of fish habitat improvement projects. ESA-listed fish are proposed to be observed or captured (using seines or electrofishing), examined, and released. ESA-listed fish are also proposed to be relocated away from stream rehabilitation project areas in the course of conducting the research. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

Modification Request Received

FWS requests modification 1 to permit 990 for authorization to include takes of juvenile, endangered, Sacramento River winter-run chinook salmon associated with fish population studies in Battle Creek, a tributary to the Sacramento River. The studies consist of four tasks for which ESA-listed fish are proposed to be taken: (1) emergence/emigration size and timing; (2) production estimates; (3) collection of tissue samples for genetic analysis; and (4) investigation of potential limiting factors for survival. ESA-listed juvenile fish are proposed to be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. ESA-listed juvenile salmon indirect mortalities are also requested. Modification 1 is requested to be valid for the duration of the permit. Permit 990 expires on June 30, 2001.

Permits and Modifications Issued

Notice was published on June 10, 1998 (63 FR 31739), that an application had been filed by the PUDDC, for Modification 1 to permit 1116. Modification 1 was issued on August 11, 1998, and authorizes PUDDC an increase in the take of juvenile, endangered, upper Columbia River steelhead associated with a new study designed to inventory fish species in Wells reservoir on the Columbia River. ESA-listed fish will be observed by SCUBA divers or collected in beach seines, anesthetized, examined, allowed to recover, and released. Modification 1 is valid for the duration of the permit. Permit 1116 expires on December 31, 2002.

Notice was published on February 19, 1998 (63 FR 8435), that an application had been filed by WDFW for a scientific research permit. Permit 1126 was issued to WDFW on August 11, 1998, and authorizes WDFW an annual direct take of adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon and juvenile, threatened, Snake River fall chinook salmon associated with scientific research conducted in the Snake River Basin in WA. The purpose of the research is to monitor and evaluate the success of hatchery supplementation programs in the region, as well as naturally produced fish populations, and to identify factors that are limiting ESA-listed fish productivity. In addition to non-lethal takes, an annual lethal take of ESA-listed juvenile fish is authorized for morphometric, meristic, pathologic, and electrophoretic studies. Permit 1126 expires on December 31, 2002.

Notice was published on June 19, 1998 (63 FR 33632), that an application had been filed by EPA for a 5-year research/enhancement permit. Permit 1156 was issued on August 14, 1998, and authorizes takes of juvenile, threatened, southern Oregon/northern California coast coho salmon; juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and juvenile, threatened, Snake River fall chinook salmon associated with research designed to collect data in the Rogue and Snake Rivers. ESA-listed fish are proposed to be captured using electrofishing, examined, and released. The data will be used to enforce the Clean Water Act which will increase the recovery potential of listed species. Permit 1156 expires on December 31, 2002.

Dated: August 20, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–22949 Filed 8–26–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 980212036–8172–03]

Extension of Comment Period for Request for Comments on the Enhancement of the .us Domain Space

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Extension of comment period.

SUMMARY: On August 4, 1998, the National Telecommunications and Information Administration (NTIA) published a Notice and Request for Comments on the Enhancement of the .us Domain Space (Notice), 63 FR 41547 (1998). The Notice asked for public comments through September 3, 1998. As a result of numerous requests from the public, NTIA is extending for 30 days the period for filing public comments. The comment period for the Notice will now close on October 5, 1998.

DATES: Written comments are requested by October 5, 1998.

ADDRESSES: The Department invites the public to submit written comments in paper or electronic form. Comments may be mailed to Karen Rose, Office of International Affairs (OIA), National Telecommunications and Information Administration (NTIA), Room 4701, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format. Comments submitted in electronic form may be sent to usdomain@ntia.doc.gov. Electronic comments should be submitted in the formats specified above.

Comments received will be posted on the NTIA website at *http://www.ntia.doc.gov*. Detailed information on electronic filing is available at *http://www.ntia.doc.gov/efiling/*.

FOR FURTHER INFORMATION CONTACT: Karen Rose, NTIA/OIA, (202) 482–0365.

SUPPLEMENTARY INFORMATION: On August 4, 1998, NTIA published ''Requests for

Comments on the Enhancement of the .us Domain Space,'' 63 FR 41547 (1998) (also posted at http://www.ntia.doc.gov/ntiahome/domainname/usrfc/dotusrfc.htm). The Notice sought comments regarding ways to make the .us domain more attractive to American businesses. Since that time, NTIA has received a number of requests to extend the comment period to allow more time to address the issues on which NTIA solicited public comment. Because of these expressions of interest, NTIA is extending the comment period for an additional 30 days to afford parties a full opportunity to respond to the important issues presented in the Notice.

Dated: August 21, 1998.

Kathy Smith,

Acting Chief Counsel.

[FR Doc. 98–22970 Filed 8–26–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 08/725,211 entitled ''Parallel Contact Patterning Using Nanochannel Glass'' Navy Case No. 76,713.

U.S. Patent Application Serial No. 08/725,213 entitled ''Nanochannel Glass Replica Membranes'' Navy Case No. 76,715.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Dr. Richard H. Rein, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: August 17, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–23049 Filed 8–26–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy's Advisory Subcommittee on Naval History

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Navy's Advisory Sub-Committee on Naval History will meet to review naval historical activities. This meeting will be open to the public.

DATES: The meeting will be held on Thursday, September 17, 1998, from 8:00 a.m. to 4:00 p.m., and Friday, September 18, 1998, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at Building 1 of the Naval Historical Center, Washington Navy Yard, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Director of Naval History, 901 M Street SE, Bldg. 57, Washington Navy Yard, Washington, DC 20374–5060, or call Dr. William S. Dudley at (202) 433–2210.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee, will meet to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History on 18 and 19 September 1997, and to make comments and recommendations on these activities to the Secretary of the Navy. This meeting will be open to the public.

Dated: August 17, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–22957 Filed 8–26–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the President, Naval War College

AGENCY: Department of the Navy, DoD.

ACTION: Notice of meeting.

SUMMARY: The Board of Advisors to the President, Naval War College, will meet to discuss educational, doctrinal, and research policies and programs at the Naval War College. This meeting will be open to the public.

DATES: The meeting will be held on September 17, 1998, from 1:00 p.m. to 5:00 p.m., and on September 18, 1998, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held in Conolly Hall, Naval War College, 686 Cushing Road, Newport, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary E. Estabrooks, Assistant to the Dean of Academics, Naval War College, 686 Cushing Road, Newport, RI, 02841–1207, telephone number: (401) 841–3589.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2) The purpose of the Board of Advisors meeting is to elicit advice on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College since the last meeting of the Board on 21 November 1997.

Dated: August 17, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–22958 Filed 8–26–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Management; Performance Review Board Membership

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board (PRB).

SUMMARY: The Secretary announces the names of members of the PRB for the Department of Education. Under 5 U.S.C. 4314 (c) (1) through (5), each agency is required to establish one or more Senior Executive Service (SES) PRBs. The PRB reviews and evaluates the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and makes

recommendations to the appointing authority relative to the performance of the senior executive, including making recommendations on performance awards.

The PRB is also responsible for providing recertification recommendations for career SES appointees in accordance with 5 U.S.C. 3393 (a) and 5 CFR 317.504 (f). Recommendations on SES pay level adjustments are also made by the PRB.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Steven Schatken, Chair, Judith Heumann, Co-Chair, Mary Ellen Dix, Philip Link, Susan Craig, Steven Winnick, Jeanette Lim, Carol Cichowski, Thomas Skelly, Larry Oxendine, Linda Paulsen, John Higgins, Steven McNamara, Mary Jean LeTendre, William Modzeleski, Patricia Guard, Joseph Conaty, Edward Fuentes, Dennis Berry, William Smith, Hazel Fiers, Diane Rossi, Linda Roberts, Raymond Pierce, Thomas Hehir, D. Jean Veta, Claudio Prieto. The following executives have been selected to serve as alternate members of the PRB: Jeanne Van Vlandren, Ricky Takai, Arthur Coleman, Curtis Richards.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Team, Human Resources Group, Office of Management, Department of Education, Room 1135, FOB–10B, 600 Independence Avenue, SW, Washington, DC 20202, Telephone: (202) 401–0546. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: August 21, 1998.

Richard W. Riley,

Secretary of Education.

[FR Doc. 98–22964 Filed 8–26–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Availability of the Draft Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor

AGENCY: Department of Energy.

ACTION: Notice of Availability and Public Meetings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Environmental Impact Statement (EIS) for the Production of Tritium in a Commercial Light Water Reactor (hereafter referred to as the CLWR Draft EIS), and the dates and locations for public meetings to receive comments on the CLWR Draft EIS. The purpose of the CLWR Draft EIS is to evaluate the environmental impacts associated with producing tritium at one or more commercial light water reactors. Tritium, a radioactive gas, is a necessary component of every weapon in the Nation's nuclear weapons stockpile.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: A copy of the CLWR Draft EIS and/or its Summary may be obtained upon request by mail (U.S. Department of Energy, Commercial Light Water Reactor Project Office, Attn: Mr. Jay Rose, P.O. Box 44539, Washington, D.C. 20026–4539), by fax (1–800–631–0612), by phone (1–800–332–0801), or electronically (CLWR web site: http://www.dp.doe.gov/dp–62).

Specific information regarding the public meetings can be obtained by calling 1–800–332–0801, writing to the address above, or electronically via the CLWR web site: http://www.dp.doe.gov/dp-62.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Department of Energy is responsible for supplying nuclear materials for strategic defense needs and for ensuring that the nuclear weapons stockpile remains safe and reliable. Tritium, a radioactive isotope of hydrogen, is an essential component of every nuclear weapon in the current and projected U.S. nuclear weapons stockpile. Unlike other materials used in nuclear weapons, tritium decays rapidly, at a rate of 5.5 percent per year. Accordingly, as long as the Nation relies on a nuclear deterrent, the tritium in each nuclear weapon must be replenished periodically. Currently, the U.S. nuclear weapons complex does not have the capability to produce the amounts of tritium that will be required to support the Nation's stockpile.

The CLWR Draft EIS evaluates the environmental impacts associated with producing tritium at one or more of the following five CLWRs: (1) Watts Bar Nuclear Plant, Unit 1 (Spring City, Tennessee); (2) Sequoyah Nuclear Plant, Unit 1 (Soddy Daisy, Tennessee); (3) Sequoyah Nuclear Plant, Unit 2 (Soddy Daisy, Tennessee); (4) Bellefonte Nuclear Plant, Unit 1 (Hollywood, Alabama); and (5) Bellefonte Nuclear Plant, Unit 2 (Hollywood, Alabama). More specifically, the CLWR Draft EIS analyzes the potential environmental impacts associated with fabricating tritium-producing burnable absorber rods (TPBARs), transporting non-irradiated TPBARs from the fabrication facility to the reactor sites, irradiating TPBARs in the reactors, and transporting irradiated TPBARs from the reactors to a tritium extraction facility that would be established at the Savannah River Site. The CLWR Draft EIS also evaluates the No Action alternative. Under this alternative, the stockpile requirements for tritium would have to be met by the construction and operation of an accelerator at DOE's Savannah River Site.

The Department does not have a preferred alternative at this time for the CLWR Draft EIS. The CLWR Final EIS will include any preferred alternative. However, the Department may choose to identify a preferred alternative prior to issuing the CLWR Final EIS.

The Department is inviting members of Congress, American Indian Tribal Governments, state and local

governments, other Federal agencies, and the general public to provide comments on the CLWR Draft EIS. The 60-day comment period starts on August 28, 1998, and will end on October 27, 1998. As part of the review period, the Department has scheduled three public meetings for the following dates, times, and locations.

October 1, 1998, 7 p.m.
North Augusta Community Center, 495 Brookside Avenue, North Augusta, SC 29842, (803) 441–4290

October 6, 1998, 7 p.m.
Northeast Alabama Community College, Tom Bevill Lyceum, 138 Alabama Highway 35 West, Rainsville, AL 35986, (205) 638–7044

October 8, 1998, 7 p.m.
Rhea County High School, Auditorium, 405 Pierce Road, Evensville, TN 37332, (423) 775–7821

Registration will begin 45 minutes before the beginning of each meeting.

Comments may also be submitted by mail (U.S. Department of Energy, Commercial Light Water Reactor Project Office, Attn: Mr. Jay Rose, P.O. Box 44539, Washington, D.C. 20026–4539), by fax (1–800–631–0612), by phone (1–800–332–0801), or electronically (CLWR web site: http://www.dp.doe.gov/dp–62). The Department will consider all comments postmarked by October 27, 1998, in preparing the CLWR Final EIS. Later comments will be considered to the extent practicable. The CLWR Final EIS is scheduled to be completed by December 31, 1998. A Record of Decision would be issued no sooner than 30 days after the CLWR Final EIS is issued.

Signed in Washington, D.C. this 21st day of August, 1998.

Thomas F. Gioconda,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 98–23063 Filed 8–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board

Date and Time: Wednesday, September 9, 1998, 8:30 A.M.–3:30 P.M.

Place: Westin Hotel at City Center, Vista Ballroom A, 1400 M Street, NE, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Wednesday, September 9, 1998

8:30–9:00 A.M. Co-Chairs' Opening Remarks
9:00–10:30 A.M. Status Report on Outstanding Action
10:30–10:45 A.M. Break
10:45–11:30 A.M. Continuation of Status Reports
11:30–1:00 P.M. Lunch Break
1:00–2:30 P.M. Discussion of Work Plan
2:30–3:15 P.M. Discussion of Other Activities
3:15–3:30 P.M. Public Comment Period
3:30 P.M. Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington D.C., the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on August 20, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–23064 Filed 8–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 98–39–NG et al]

CCGM, L.P. et al; Orders Granting and Vacating Authorizations to Import and/or Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting and vacating various natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 20, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import and Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATION

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-Year Maximum		Comments
			Import volume	Export volume	
1395	07/01/98	CCGM, L.P. 98–39–NG	146 Bcf		Import and export combined total from and to Canada and Mexico, beginning July 1, 1998, through June 30, 2000.
1396	07/01/98	Consumers Energy Company 98–49–NG.	73 Bcf	.....	Import from Canada beginning August 1, 1998, through July 31, 2000.
1397	07/01/98	Coral Energy Resources, L.P. 98–48–NG.	730 Bcf	730 Bcf	Import combined total, including LNG from Canada and Mexico and export combined total, including LNG, to Canada and Mexico beginning on date of first import or export delivery.
1398	07/09/98	Florida Power & Light Company 98–51–NG.	100 Bcf		Import and export combined total from and to Canada beginning on date of first delivery.
1399	07/09/98	IGI Resources, Inc. 98–52–NG ...	300 Bcf	.....	Import from Canada beginning August 1, 1998, through July 31, 2000.
1400	07/09/98	AEC West Ltd. 98–50–NG	200 Bcf	.....	Import from Canada beginning August 1, 1998, through July 31, 2000.
1401	07/10/98	Engage Energy US, L.P. 98–53–NG 96–90–NG.	600 Bcf	150 Bcf	Import from Canada and Mexico and export from Canada and Mexico beginning July 12, 1998, through July 11, 2000. Vacating Order 1230, as amended by 1230–A.
1402	07/27/98	North American Energy, Inc. 98–55–NG.	15 Bcf	.....	Import from Canada beginning on August 3, 1998, through August 2, 2000.
1403	07/27/98	Premstar Energy Canada, Ltd. 98–54–NG.	140 Bcf	140 Bcf	Import and export from and to Canada beginning on the date of first import or export.

[FR Doc. 98–23065 Filed 8–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–38–000]

American REF–FUEL Company of Essex County; Notice of Issuance of Commission Letter Order and Comment Period

August 21, 1998.

Take notice that on August 21, 1998, the Acting Director, Division of Electric and Hydropower Operations, pursuant to delegated authority, issued a Letter Order to American REF–FUEL Company of Essex County (ARC Essex) conditionally granting blanket approval under 18 CFR Part 34 of all future issuances of securities and assumption of liabilities by ARC Essex.

The ordering paragraphs of the August 21 Letter Order read, in part, as follows:

Within 30 days of the date of this letter order, any person desiring to be heard or to protest this blanket approval of the issuances of securities or assumptions of liabilities by ARC Essex should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 and 385.214).

Absent a request for hearing within the period set forth above, ARC Essex is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ARC Essex's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is September 21, 1998.

Copies of the full text of the Letter Order are available from the Commission's Public Reference Branch, Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22995 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–40–000]

American REF–FUEL Company of Hempstead; Notice of Issuance of Commission Letter Order and Comment Period

August 21, 1998.

Take notice that on August 21, 1998, the Acting Director, Division of Electric and Hydropower Operations, pursuant to delegated authority, issued a Letter Order to American REF–FUEL Company of Hempstead (ARC Hempstead) conditionally granting blanket approval under 18 CFR Part 34 of all future issuances of securities and assumption of liabilities by ARC Hempstead.

The ordering paragraphs of the August 21 Letter Order read, in part, as follows:

Within 30 days of the date of this letter order, any person desiring to be heard or protest this blanket approval of the issuances of securities or assumptions of liabilities by ARC Hempstead should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214).

Absent a request for hearing within the period set forth above, ARC Hempstead is authorized to issue securities and assume

obligations of liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval or ARC Hempstead's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is September 21, 1998.

Copies of the full text of the Letter Order are available from the Commission's Public Reference Branch, Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22997 Filed 8–26–98 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–733–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 21, 1998.

Take notice that on August 19, 1998, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE, Charleston, West Virginia 25314, filed a prior notice request with the Commission in Docket No. CP98–733–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point for interruptible transportation service to Bright Energy, Inc. (Bright Energy), a local distribution company, in Morrow County, Ohio, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Columbia proposes to construct and operate a delivery point to serve Bright Energy's commercial, industrial, and residential customers in Morrow County. Columbia proposes to deliver up to 1,500 Dekatherm equivalents of natural gas per day at the proposed delivery point on Columbia's Line D in the South Bloomfield Township area of Morrow County. Columbia would deliver the gas under its FERC Rate Schedule ITS at the proposed delivery point. Columbia states that Bright Energy would reimburse Columbia approximately $7,766 for the construction cost of the proposed Deep Creek delivery point.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no request is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22986 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3729–000]

Consolidated Edison Solutions, Inc.; Notice of Filing

August 21, 1998.

Take notice that on August 18, 1998, Consolidated Edison Solutions, Inc. tendered for filing a revision to the filing that it originally made in this docket on July 14, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 1, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22990 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–128–009]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 21, 1998.

Take notice that on June 30, 1998, Eastern Shore Natural Gas Company (Eastern Shore), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following revised tariff sheets, with a proposed effective date of February 1, 1998:

First Revised Sheet No. 129
Substitute First Revised Sheet No. 231

Eastern Shore states that such tariff sheets have been submitted to comply with the Commission's June 12, 1998 order issued in the above-referenced dockets. Such order directed Eastern Shore to file revised tariff sheets to: (1) clarify its definition of Negotiated Rate and (2) consider only reservation charges and/or other guaranteed revenue stream, and not load factor, when evaluating two competing kids for purposes of allocating capacity, in order to fully conform its tariff to the Commission's current policy on negotiated rates.

Eastern Shore also states that a copy of its filing is available for inspection at its office at 417 Bank Lane, Dover, Delaware; and copies have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protest must be filed on or before August 28, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22991 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–286–001]

Granite State Gas Transmission, Inc.; Notice of Compliance Tariff Filing

August 21, 1998.

Take notice that on August 14, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on August 1, 1998:

Fifth Revised Sheet No. 215
Substitute Seventh Revised Sheet No. 289

According to Granite State, the foregoing revised tariff sheets incorporate additional Gas Industries Standard Board (GISB) requirements in the Company's tariff in compliance with conditions in a letter order issued by the Director of the Office of Pipeline Regulation on July 24, 1998. Granite State further states that its filing also responds to certain other conditions in the July 24th letter order concerning the incorporation of GISB requirements in its tariff.

Granite State further states that copies of its filing have been served on its firm and interruptible customers, and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22988 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–732–000]

Koch Gateway Pipeline Company; Notice of Application

August 21, 1998.

Take notice that on August 18, 1998, Koch Gateway Pipeline Company (Applicant), 20 Greenway Plaza, P.O. Box 1478, Houston, Texas, 77251–1478, filed in Docket No. CP98–732–000 an abbreviated application pursuant to Sections 7(b) of the Natural Gas Act, as amended, for permission and approval to abandon an obsolete natural gas transportation service for Florida Gas Transmission Company (FGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon an obsolete transportation service formally provided to FGT pursuant to Applicant's Rate Schedule X–115. Applicant states that the transportation service was never utilized by FGT. Applicant further states that FGT concurs with the proposed abandonment and that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22993 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–809–000, et al., and CP96–810–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Informational Meeting

August 21, 1998.

At the request of Congressman Tom Allen the staff of the Commission will hold an informational meeting in Richmond, Maine on September 2, 1998. In the first half of the meeting the staff will answer general questions on landowner issues such as eminent domain and property rights. In the second half of the meeting the staff will answer questions on the environmental mitigation measures. However, because the Commission Order issued July 31, 1998, is subject to petitions for rehearing at this time, the staff will not be able to discuss the merits of any pending issues in this case, such as the Commission's selection of the proposed route over the Northern Alternate.

The first part of the meeting will begin at 5:00 p.m. and continue to 6:30 p.m. At 7:00 p.m. the second part of the meeting will begin, ending at 8:30 p.m.

The meeting will be held at: Richmond High School, Richmond High School Gym, Route 197, Richmond, Maine.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22998 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–375–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

August 21, 1998.

Take notice that on August 14, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A certain tariff sheets to reflect various housekeeping revisions and updates. PG&E GT–NW requests that the above-referenced tariff sheet become effective September 15, 1998.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22989 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–39–000]

SEMASS Partnership; Notice of Issuance of Commission Letter Order and Comment Period

August 21, 1998.

Take notice that on August 21, 1998, the Acting Director, Division of Electric and Hydropower Operations, pursuant to delegated authority, issued a Letter Order to SEMASS Partnership (SEMASS) conditionally granting blanket approval under 18 CFR Part 34 of all future issuances of securities and assumption of liabilities by SEMASS.

The ordering paragraphs of the August 21 Letter Order read, in part, as follows:

Within 30 days of the date of the letter order, any person desiring to be heard or to protest this blanket approval of the issuances of securities or assumptions of liabilities by SEMASS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within the period set forth above, SEMASS is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of SEMASS' issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is September 21, 1998.

Copies of the full text of the Letter Order are available from the Commission's Public Reference Branch, Room 2A, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22996 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–726–000]

South Georgia Natural Gas Company; Notice of Request Under Blanket Authorization

August 21, 1998.

Take notice that on August 17, 1998, South Georgia Natural Gas Company, (South Georgia), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–726–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct, install and operate a new delivery point, including measurement and appurtenant facilities for service to Peoples Gas System (Peoples). South Georgia makes such request under its blanket certificate issued in Docket No. CP82–548–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

South Georgia proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Peoples at a new delivery point, so that Peoples, in turn may provide natural gas service to additional customers on its distribution system. South Georgia states that it proposes to locate the facilities at or near Mile Post 68.5 on the 12-inch Jacksonville Line in Baker County, Florida.

In order to provide service to Peoples at the new delivery point, South Georgia proposes to construct, install and operate a meter station consisting of one 3-inch rotary meter and other appurtenant facilities. It is stated that South Georgia will own and operate the meter station as part of its pipeline system. It is indicated that Peoples will construct, own, and operate as part of its natural gas distribution system approximately 30 miles of 4-inch diameter pipeline extending downstream of the meter station.

It is stated that South Georgia will transport gas on behalf of Peoples under South Georgia's existing Service Agreements pursuant to South Georgia's Rate Schedule IT. It is estimated that the average annual volumes for deliveries to the Baker County meter station are 263,000 Mcf which is equivalent to an estimated daily average of 720 Mcf. South Georgia states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

It is estimated that the construction and installation of the measurement facilities is approximately $214,200. South Georgia avers that Peoples has agreed to reimburse South Georgia for the cost of constructing and installing the proposed facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22992 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–000, ER98–1019–000, ER98–2550–000, ER98–495–000, ER98–1614–000, ER98–2145–000, ER98–2668–000, ER98–2669–000, ER98–496–000, ER98–2160–000, ER98–441–001, ER98–495–001, and ER98–496–001]

Notice of Settlement Conference

August 21, 1998.

In the matter of: Southern California Edison Company, et al.; California Independent System Operator Corp.; El Segundo Power, LLC; Pacific Gas & Electric Company; Duke Energy Moss Landing LLC; Duke Energy Oakland LLC; San Diego Gas & Electric Company; Southern California Edison Company; Pacific Gas & Electric Company; San Diego Gas & Electric Company.

Take notice that a settlement conference will be convened in the subject proceedings on Wednesday, September 2, 1998, at 9:00 AM, through Thursday, September 3, 1998. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to § 385.214 of the Commission's regulations.

For additional information, please contact Paul B. Mohler at (202) 208–1240, or Linda Lee at (202) 208–0673. Mr. Mohler or Ms. Lee can also be reached by e-mail at paul.mohler@ferc.fed.us, or at linda.lee@ferc.fed.us.

Parties wishing to discuss issues with the Settlement Judge for these proceedings may contact: Honorable Curtis L. Wagner, Jr., Chief Administrative Law Judge, Federal Energy Regulatory Commission, 888 First St., N.E., Room 11F–1, Washington, DC 20426, Phone: 202–219–2500, FAX: 202–219–3289, E-mail: curtis.wagner@ferc.fed.us with a cc to: martha.altamar@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22994 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–723–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

August 21, 1998.

Take notice that on August 13, 1998, Williams Gas Pipelines Central, Inc. (Williams), formerly named Williams Natural Gas Company, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–723–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing Williams to increase the Maximum Allowable Operating Pressure (MAOP) of the 2.8 mile, 6-inch diameter, Iola Lateral pipeline located in Allen County, Kansas, all as more fully set forth in application which is on file with the Commission and open to public inspection.

Williams proposes to increase the MAOP of the Iola Lateral from 86 psig to 175 psig. Williams will perform the pressure test required for the proposed uprate using natural gas. Williams estimates that the proposed uprate and testing will cost $17,628.

Any person desiring to be heard or making any protest with reference to said application should on or before September 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22987 Filed 8–26–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6153–1]

Request for Comments: National Emission Standards for Hazardous Air Pollutants: Radionuclides; Information Collection Activities Up for Renewal (OMB Control Number 2060–0191)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Environmental Protection Agency (EPA) is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Emission Standards for Hazardous Pollutants; Radionuclides, EPA ICR Number: 1100.09, which expires on January 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before October 26, 1998.

ADDRESSES: Office of Radiation and Indoor Air, Radiation Protection Division, Center for Federal Guidance, Air Standards and Communications, Environmental Protection Agency, 401 M Street, SW, 6602J, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton-Jones, telephone: (202) 564–9773, fax: (202) 565–2065, E-mail: *thornton.eleanor@epa.gov*

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities affected by this action are Department of Energy (DOE), facilities, elemental phosphorus plants, phosphogypsum stacks, underground uranium mines and uranium mill tailings piles.

Title: National Emission Standards for Hazardous Air Pollutants: Radionuclides, OMB No. 2060–0191; EPA ICR No. 1100.09 expiring 1/31/99.

Abstract: On December 15, 1989 pursuant to section 112 of the Clean Air act as amended in 1977 (42 U.S.C. 1857), EPA promulgated NESHAPs to control radionuclide emissions from several source categories. The regulations were published in 54 FR 51653, and are codified at 40 CFR part 61, subparts B, H, I, K, R, T, and W. Due to petitions for reconsideration, EPA rescinded subpart T (July 15, 1994, 59 FR 36280) as it applies to owners and operators or uranium mill tailings disposal sites licensed by NRC or an affected Agreement State.

Since the last ICR, EPA also has rescinded subpart I as it applies to NRC-licensed facilities, effective December 30, 1996 (61 FR 68971). EPA rescinded subpart I for NRC licensees because in the 1990 Clean Air Act amendments, Congress directed EPA to stop regulating radionuclide emissions from NRC licensed facilities if EPA determines that the NRC regulatory program protects the public health with an ample margin of safety. After careful review, EPA determined that public health would be protected with an ample margin of safety by NRC's program. EPA's decision was based on NRC's promulgation of the constraint rule, 10 CFR part 20 (61 FR 65120, December 10, 1996), requiring licensees to establish a dose constraint for air emissions of radionuclides of 10 mrem/year total effective dose equivalent for dose to members of the public; a 1992 survey conducted by EPA which found no facility exceeding EPA's 10 mrem/yr effective doses equivalent standard; and data collected during implementation of subpart I. The existing subpart I of the radionuclide NESHAP now only applies to non-DOE federal facilities not licensed by NRC.

Information is being collected pursuant to Federal regulation 40 CFR part 61. The pertinent sections of the regulation for reporting and recordkeeping are listed below for each source category:

Department of Energy—Sections 61.93, 61.94, 61.95
Elemental Phosphorous—Sections 61.123, 61.124, 61.126
Phosphogypsum Stacks—Sections 61.203, 61.206, 61.207, 61.208, 61.209
Underground Uranium Mines—Sections 61.24, 61.25
Uranium Mill Tailings Piles—Sections 61.253, 61.254, 61.255, 61.223, 61.224

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Data and information collected is used by EPA to ensure that public health continues to be protected from the hazards of airborne radionuclides by compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP). Compliance is demonstrated through emission testing and/or dose calculation. Results are submitted to EPA annually for verification of compliance and maintained for a period of 5 years. EPA needs this information to ensure that the regulated facilities are in compliance with the standard, to identify violators, and take corrective action to bring the facilities back into compliance.

Other 40 CFR 61 Facilities—The estimates in this ICR renewal include burden on DOE facilities, elemental phosphorous plants, non-DOE federal facilities not licensed by NRC, phosphogypsum stacks, underground uranium mines and uranium mill tailings piles. For purposes of the burden estimates, it is assumed that all facilities will perform emission testing in lieu of analytical analysis to estimate emissions because, although testing is more time consuming than analytic analysis, the ICR estimates are required to represent a worst case scenario by a factor of about 20. Required activities consist of reading and understanding the regulatory provisions and compliance procedures, preparing a test plan, performing testing, performing data analysis, preparing a report, and storing and maintaining data. Accordingly, it is estimated that the burden will not exceed 288 hours per response and more likely be in a 29 to 288 hour range. The overall radionuclide NESHAP burden has already been reduced by 80 percent due to the rescission of subpart I in December 30, 1996.

Respondent	Number of facilities	Burden hours	Annual burden hours
Department of Energy	40	1,002	40,080
Elemental Phosphorous	3	268	804
Non-DOE not licensed by NRC	20	40	800
Phosphogypsum Stacks	20	132	2,640
Phosphogypsum Stacks	10	100	1,000
Underground Uranium Mines	10	300	3,000
Uranium Mill Tailings Piles, Subpart T	19	96	1,824
Uranium Mill Tailings Piles, Subpart W	10	56	560
Total	132	1994	50,708

It is estimated that 132 facilities would be required to report emissions and/or effective dose equivalent annually and retain supporting records for five years. Estimated annualized capital/start up costs are: $45,000 and the annual operation and maintenance costs are: $1,744,950.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: August 19, 1998.

Frank Marcinowski,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. 98–23081 Filed 8–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6151–6]

Underground Injection Control Program: Substantial Modification to an Existing State-Administered Underground Injection Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comment on a Substantial Modification to the Wyoming 1422 Underground Injection Control Program.

SUMMARY: The Safe Drinking Water Act (SDWA) establishes the Underground Injection Control (UIC) Program, which is designed to protect present and future underground sources of drinking water (USDWs) and to prevent underground injection through wells that may endanger these drinking water sources. The SDWA provides for states to apply for and receive approval from the Environmental Protection Agency (EPA) to administer their own UIC programs, if the State regulations and statutes meet EPA's minimum requirements as specified in 40 CFR Part 144, 145, and 146 or the ''protective'' standard specified in § 1425 of the SDWA for oil and gas related wells. One of these requirements specified in 40 CFR 144.7 is the identification of (USDWs). If an aquifer is a USDW, injection into it can only occur if it is exempted from this classification because it is not serving a drinking water system and is not expected to do so in the future. Therefore, injection into any aquifer that meets the classification as a USDW can only take place if it is exempted from the classification as a USDW. Criteria for exempting aquifers is in Title 40 § 146.4. Certain exemptions are considered substantial program revisions.

Once the State program receives final approval, subsequent modifications to the programs can be requested by the State and accomplished through the specifications under 40 CFR 145.32. Upon receiving a request for modification of a State program, EPA determines if the requested modification is ''substantial'' or ''non-substantial.'' A request for an aquifer exemption is one type of program modification that can be requested by the State. An aquifer exemption request often accompanies a draft permit for an injection well that will inject into a USDW that can be proven to meet criteria specified in 40 CFR 146.4. If the aquifer exemption is considered a ''non-substantial'' modification to the existing State program, then it can be evaluated and approved or disapproved by the EPA Regional Administrator. However, if the aquifer proposed for exemption contains formation fluids with less than 3,000 mg/l Total Dissolved Solids (TDS) which is related to any Class I well or is not related to action on a permit (except in the case of rule authorized enhanced recovery operations in oil fields), then the aquifer exemption represents a ''substantial'' modification to the State program. In this case, according to 40 CFR 145.32, the proposed program revision shall be published in the **Federal Register** to provide the public an opportunity to comment for a period of at least 30 days. The authority to approve or disapprove the proposed change lies with the EPA Administrator. The proposed substantial revision to the Wyoming 1422 UIC program for which public comments are being solicited is a request for the exemption of 0.04 square miles of the Lance Formation at an approximate depth of 3,800 to 6,500 feet below ground surface surrounding two non-hazardous Class I injection wells in the Powder River Basin within Johnson County, Wyoming.

Public comments are encouraged and a public hearing will be held upon request. A request for a public hearing should be made in writing and should state the nature of the issues proposed to be raised at the hearing. A public hearing will be held only if significant interest is shown.

DATES: EPA must receive public comment, in writing, on the proposed modification of the Wyoming 1422 program by September 28, 1998.

ADDRESSES: Send written comments to Valois Shea-Albin, Ground Water Unit (8P–W–GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, by the deadlines provided above. Copies of the application and pertinent materials are available for review by the public between 8:30 a.m. and 4:00 p.m.

Monday through Friday at the following locations:

Environmental Protection Agency, Region VIII, Ground Water Unit, 4th Floor Terrace, 999 18th Street, Denver, CO 80202–2466;
and
Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, WY 82002.

FOR FURTHER INFORMATION CONTACT: Valois Shea-Albin, US EPA Region VIII, 8P–W–GW, 999 18th Street, Suite 500, Denver, CO 80202, (303) 312–6276.

SUPPLEMENTARY INFORMATION:

I. Introduction

In October, 1997, COGEMA Mining, Inc., (COGEMA) and the Wyoming Department of Environmental Quality (WDEQ) requested that EPA grant an aquifer exemption for the Lance Formation in the areas encompassed by a radius of 1,320 feet surrounding two Class I non-hazardous injection wells, the COGEMA DW No. 1 and the Christensen 18–3, in Johnson County, WY. The proposed injection intervals are 3,818 to 6,320 feet and 4,009 to 6,496 feet in depth below ground surface, respectively. The total area of the Lance Formation included in the proposed exemption is 0.4 square miles.

The Lance Formation fluids contain less than 3,000 mg/l Total Dissolved Solids (TDS), dictating that this aquifer exemption be a substantial revision of the WY 1422 Underground Injection Control (UIC) program according procedures listed in UIC Guidance #34, Guidance for Review and Approval of State UIC Programs and Revisions to Approved State Programs. The aquifer proposed for exemption has been determined by WDEQ to be too deep to be considered as an economically feasible source of drinking water. EPA has examined the aquifer exemption request, the accompanying information, and responses from WDEQ and COGEMA to EPA concerns, and, for reasons described herein, recommends approval of this aquifer exemption.

II. Background

COGEMA operates the Christensen Ranch in-situ leaching uranium mine within the Wasatch Sandstone Formation in Johnson and Campbell Counties, WY. The Wasatch Formation overlies the Lance Formation by about 2,600 feet at the mine site. The mining operation has comprised five well fields to date, two of which are currently producing, and three that have been mined out. The operation has reached the phase where large scale restoration of the groundwater within the mined out well fields is being conducted simultaneously with mineral extraction.

Groundwater restoration is conducted to return the groundwater affected by mining to its baseline condition or to a condition consistent with its pre-mining or potential use upon completion of mining activities. After the restoration process is completed, the concentrations of contaminants are reduced to levels below drinking water standards. For the successful restoration of the groundwater quality within the mine-out areas of the Wasatch Formation, a wastewater disposal capacity of 300 to 500 gallons per minute (gpm) will be required over the next 18 years. Additionally, this type of operation requires the bleed-off of part of the fluid extracted in order to keep underground water flow into the mining area and prevent the contamination of adjacent aquifers in the Wasatch Formation. To date COGEMA has managed disposal of the fluid wastes under an NPDES permit to discharge to the surface, and through using evaporation ponds and limited non-hazardous Class I injection well disposal. The regulatory reduction of the selenium level permitted under NPDES will force COGEMA to discontinue surface discharge in the near future. After evaluating treatment methods to remove selenium from the wastewater in order to continue surface discharge, COGEMA found that reverse osmosis was the only method that consistently met the new selenium standard. The reverse osmosis process would treat 75% of the waste stream resulting in water of high enough quality for surface discharge. However, the high volume of remaining concentrated brine produced by the reverse osmosis process would still require the use of the two Class I injection wells and the aquifer exemption.

COGEMA was previously granted an aquifer exemption for the above wells to inject into the Teckla, Parkman, and Teapot Formations (between 3,000 and 10,000 TDS, containing traces of oil and gas, and too deep to be an economically feasible source of drinking water). The original exempted interval for the COGEMA DW No. 1 was 7,500 to 8,470 feet in depth and 7,631 to 8,604 feet in depth for the Christensen 18–3. Trial injection into these formations revealed they were only capable of receiving less than 10 gpm instead of the 75 to 150 gpm anticipated from the evaluation of porosity logs. As a result, the company has now requested a permit modification to inject into the Lance Formation, an overlying geologic unit.

III. Injectate

The injectate will consist of operational bleed streams from commercial in-situ leaching uranium mining operations as well as fluids from the restoration of the aquifer. The constituents on the injectate include the following process and restoration bleed streams: normal overproduction (well field bleed) streams, laboratory wastewater, reverse osmosis brine, and groundwater sweep solutions. The bleed streams are defined as non-hazardous, and as beneficiation wastes exempt from regulation under the Resource Conservation and Recovery Act as stipulated by the Bevill Amendment (40 CFR 261.4(b)(7)).

IV. Basis for Approval of Proposed Aquifer Exemption

The information provided by COGEMA in the reports included in the docket adequately addresses the requirements of 40 CFR 146.4 supporting approval of the proposed aquifer exemption request for the Lance Formation.

Approximately 30 miles to the west, the Lance outcrops to the surface and wells developed there are for livestock use. Five wells jointly completed in the Lance and Fox Hills formations formerly served as public water supplies to the municipalities of Midwest and Edgerton, WY, 30 miles southwest of the proposed exemption area until 1997. At that time, the wells were abandoned because of low water productivity (40 gpm sustainable flow) and the expense of treatment that would be required to continue using these wells as a public water supply. The towns of Midwest and Edgerton have determined that piping in pre-treated water 50 miles from Casper is more economically feasible, especially with the addition of some financial incentives, than continuing operation of the wells completed in the Lance/Fox Hills formations, even at the relatively shallow depth of 1,500 to 2,000 feet. Therefore, the Lance is no longer supplying water to a public drinking water system within 30 miles of the proposed aquifer exemption area.

The Midwest-Edgerton public water supply scenario should be noted as the most compelling support for the approval of this aquifer exemption request and the feasibility of using the Lance Formation as a public water supply. The five wells were abandoned in favor of piping in an alternative water supply. The decision to abandon these wells was based on the economic impact of the need to treat the water and the low production rates of the wells,

even though the costs of development had already been expended, and the wells tapped shallower portions of the Lance Formation compared to the proposed aquifer exemption area (page 13, April 17, 1998, COGEMA report).

The Lance Formation will probably never again be considered to be an economically feasible source of drinking water in the area of the proposed aquifer exemption because of the great depth, low water production capacity, and treatment costs that will be necessary based on the Midwest-Edgerton wells. The cost of developing the Lance Formation as a drinking water supply within the proposed aquifer exemption area is high compared to that of developing shallow, more prolific, and higher quality sources of drinking water. Other regional aquifers, the Wasatch and Fort Union Formations for example, are better suited for development in this area as a source of drinking water due to higher producing capability, significantly better water quality, and no water treatment costs.

VI. Regulatory Impact

There will be no modification in regulations, either in the Code of Federal Regulations or Wyoming DEQ Water Quality Rules and Regulations, as a result of this proposed program modification.

Dated: August 19, 1998.

D. Edwin Hogle,

Director, Groundwater Program, Office of Partnerships and Regulatory Assistance, Region VIII.

[FR Doc. 98–22897 Filed 8–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6153–3]

Notice of Third Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement meeting.

SUMMARY: Third Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

TIME AND DATE: 8:00 a.m.–4:00 p.m., September 24, 1998.

PLACE: DoubleTree Hotel, 7901 24th Avenue South, Bloomington, MN; (612) 854–2244.

STATUS: Open to the public, limited only by the space available. The room accommodates approximately 125 people.

PURPOSE: The Task Force consisting of Federal, State, and Tribal members, leads efforts to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds.

MATTERS TO BE DISCUSSED: Agenda items include development of a strategy for implementing short-term, win-win implementation activities and longer term broader goals and activities, progress in involving the Governors of the Mississippi River Basin, and discussion of preliminary findings of the Committee on Environment and Natural Resources' Hypoxia Science Assessment teams. The public will be afforded an opportunity to provide input during open discussion periods.

CONTACT PERSON FOR MORE INFORMATION: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone (202) 260–7061; Internet: belefski.mary@epamail.epa.gov.

Dated: August 21, 1998.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 98–23082 Filed 8–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6153–4]

National Drinking Water Advisory Council Benefits Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Benefits Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on September 25, 1998 from 8:30 AM until 5:00 PM (approximate), in the Lee Room of the Ramada Plaza Hotel—Old Town, 901 North Fairfax Street, Alexandria, VA 22314. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to analyze relevant issues and facts that relate to the development of a new framework for benefits estimation in the rulemaking process. Specific issues to be addressed in this meeting include the consideration of qualitative information and the comparison of cost to benefits information. The working group members will be asked to provide advice and recommendations to the Agency, through the full National Drinking Water Advisory Council, on these and other issues. The meeting is open to the public to observe and statements will be taken from the public as time allows.

For more information, please contact, John Bennett, Designated Federal Officer, Benefits Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–0446, fax 202–260–3762, and e-mail address bennett.johnb@epamail.epa.gov.

Dated: August 17, 1998.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98–23083 Filed 8–26–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 20, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by October 26, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0656.

Title: Application to Participate in an FCC MDS Auction.

Form Number: FCC 175–M.

Type of Review: Extension of currently approved collection.

Respondents: Businesses, or other-for-profit entities.

Number of Respondents: 50.

Estimated Time Per Response: 40 minutes (10 minutes/respondent + 30 minutes/contracting attorney).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2 hours.

Cost to Respondents: $5,000.

Needs and Uses: On 6/15/95, the Commission adopted a Report and Order in MM Docket No. 94–131 and PP Docket No. 93–253, Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding. The purpose of this Report and Order was to streamline the procedures for filing MDS applications and facilitate the development and rapid deployment of wireless cable services. Among other things, this Report and Order establishes competitive bidding rules and procedures for the Multipoint Distribution Service (MDS). The Commission determined that simultaneous multiple round bidding would be used in the MDS auctions.

For the MDS auctions, the Commission determined that designated entities would only include small businesses. Due to the differing criteria for establishing designated entity status, the Commission created FCC 175M. This form essentially has the same data elements as the current FCC 175 (3060–0600). The form FCC 175–M is tailored for use only by MDS applicants.

The information will be used by FCC staff to determine whether the applicant is legally, technically and otherwise qualified to participate in the auction. The rules and requirements were designed to ensure that the competitive bidding process is limited to serious, qualified applicants and to deter possible abuses of the bidding and licensing processes.

OMB Approval Number: 3060–0658.

Title: Section 21.960, Designated entity provisions of MDS.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 75.

Estimated Hours Per Response: 1–2 hours (1 hour for records maintenance; 2 hours for designated entity exhibits: 1 hour/respondent + 1 hour/contract attorney).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 75 hours.

Cost to Respondents: $4,000.

Needs and Uses: Section 21.960(e) requires winning bidders who are designated entities (small businesses) to file with its long-form application or statement of intention an exhibit which includes eligibility requirements as listed in Section 21.960(e). This exhibit should also list and summarize all agreements that affect designated entity status.

Section 21.960(f) requires all holders of BTA authorizations acquired by auction that claim designated entity status to maintain, at their principal place of business or with their designated agent, an updated documentary file of ownership and revenue information necessary to establish their status. All BTA authorization holders claiming eligibility under designated entity provisions are subject to audits under Section 21.960(g). Selection for an audit may be random, on information from any source, or on the basis of other factors. These audits may include inspection of the BTA holders' books, documents and other materials sufficient to confirm that such holders' representations are, and remain, accurate.

The exhibit submitted under Section 21.960(e) is necessary for the Commission to determine whether the applicant is qualified as a designated entity (small business) and therefore eligible for special measures including installment payments, reduced up-front payments and bidding credits. The records maintenance and audit provisions of Sections 21.960(f) and (g) are necessary to prevent abuse of the special measures offered to those MDS auction winners claiming designated entity status. These provisions requiring the retention of records should not prove overly burdensome, and they will help to ensure that only entities eligible under the auction rules will be able to take advantage of the designated entity measures.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–23019 Filed 8–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 20, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 28, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room

234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0214.

Title: Section 73.3526, Local Public Inspection File of Commercial Stations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households.

Number of Respondents: 11,518 (10,321 commercial radio stations + 1,197 commercial television stations).

Estimated Time Per Response: 1.0–2.5 hours (1.0 hour/commercial television stations for ''must-carry/retransmission'' consent; 2.0 hours/radio stations and 2.5 hours/television stations for public inspections).

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Burden: 1,288,844 hours.

Cost to Respondents: $0.

Needs and Uses: Section 73.3526 requires each licensee/permittee of a commercial AM, FM or TV broadcast station to maintain a file for public inspection. The contents of the file vary according to the type of service and status. The data are used by the public and the FCC staff to evaluate information about the station's performance.

OMB Approval Number: 3060–0215.

Title: Section 73.3527, Local Public Inspection File of Noncommercial Educational Stations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,272 (2,272 noncommercial educational radio and television stations + 15 noncommercial television stations with ''must carry'' status).

Estimated Time Per Response: 1–2 hours (1 hour/noncommercial educational television stations for ''must-carry'' status; 2 hours/noneducational radio and television stations).

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Burden: 236,303 hours.

Cost to Respondents: $0.

Needs and Uses: Section 73.3527 requires each noncommercial educational broadcast station licensee/permittee to maintain a file for public inspection. The contents of the file vary according to the type of service and status. The data are used by the public and the FCC staff in field investigations to evaluate information about the station's performance.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–23020 Filed 8–26–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1656]

Temporary Waiver of Rules Granted to Goodman/Chan Receivership Licensees and Similarly Situated Non-Goodman/Chan General Category SMR Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Notice, the Wireless Telecommunications Bureau (Bureau) describes the temporary waiver of rules granted to Goodman/Chan Receivership licensees and similarly situated non-Goodman/Chan General Category (similarly situated licensees) SMR licensees in the *Goodman/Chan Recon Order*. Specifically, the Bureau explains that the *Goodman/Chan Recon Order* grants the Goodman/Chan Receivership licensees and similarly situated licensees who have not yet constructed, ninety days, beginning on the day the Goodman/Chan Order is published in the **Federal Register**, to apply to transfer or assign unconstructed licenses that have received construction extensions pursuant to the *Goodman/Chan Order* and the *Goodman/Chan Recon Order*. The Bureau explains that only Goodman/Chan Receivership licensees and similarly situated licensees are eligible for this temporary waiver.

FOR FURTHER INFORMATION CONTACT: Terry Fishel at (717) 338–2602, or Ramona Melson or David Judelsohn at (202) 418–7240.

SUPPLEMENTARY INFORMATION: On May 22, 1995, the Commission adopted the *Goodman/Chan Order*, which provides General Category Specialized Mobile Radio (SMR) licensees who received licenses through one of four fraudulent application preparation companies (Receivership Companies) an additional four months to construct and commence operations of their licenses. Daniel R. Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of §§ 90.633(c) and 1.1102 of the Commission's Rules, *Memorandum Opinion and Order*, 10 FCC Rcd. 8537 (1995) (*Goodman/Chan Order*). Although the Commission stated that the four-month period would commence upon publication of the *Goodman/Chan Order* in the **Federal Register**, *Goodman/Chan Order*, 10 FCC Rcd. at 8551, ¶ 31, publication of the *Goodman/Chan Order* in the **Federal Register** has not yet occurred.

On July 16, 1998, the Commission adopted Daniel R. Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of §§ 90.633(c) and 1.1102 of the Commission's Rules, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98–167 (released July 31, 1998) (*Goodman/Chan Recon Order*) which, *inter alia*, removes the impediments to implementing the relief granted by the *Goodman/Chan Order*. Earlier, in Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *Second Report and Order*, 12 FCC Rcd. 19079, 19096–19098, ¶¶ 40–44 (1997) (*800 MHz SMR Second Report and Order*), the Commission temporarily waived its prohibition of the assignment or transfer of unconstructed licenses, 47 CFR 90.609(b), for all holders of unconstructed spectrum on the lower 80 and General Category channels in order to encourage rapid migration of incumbents from the upper 200 channels to the lower band 800 MHz channels, and facilitate geographic licensing. The temporary waiver was granted for the six month period following the conclusion of the 800 MHz upper band auction, *i.e.*, until June 8, 1998. For the same reasons, the *Goodman/Chan Recon Order* granted the Goodman/Chan Receivership licensees and similarly situated non-Goodman/Chan General Category SMR licensees (similarly situated licensees) who have not yet constructed, ninety days, beginning on the day the *Goodman/Chan Order* is published in the **Federal Register**, to apply, if they so choose, to transfer or assign unconstructed licenses that have received construction extensions pursuant to the *Goodman/Chan Order* and the *Goodman/Chan Recon Order*. *Goodman/Chan Recon Order*, ¶ 56. Similarly situated licensees are non-Goodman/Chan licensees who purchased and received application preparation services and were granted an 800 MHz SMR General Category license with an eight month construction period. In most instances, the similarly situated licensees are

individuals who obtained their licenses through SMR application preparation companies similar to the Receivership Companies, but did not hire one of the four companies that were the subject of the Goodman/Chan proceeding. In order to be granted this limited relief, these licensees must have originally been granted an eight-month construction period and must have a valid extension request on file with the Commission. *See Goodman/Chan Recon Order*, ¶ 60, nn.212–213.

All such transfer and assignment requests must be filed with the Commission within ninety days after the *Goodman/Chan Order* is published in the **Federal Register**. The temporary waiver of § 90.609(b) of the Commission's rules granted by the *800 MHz SMR Second Report and Order* expired on June 8, 1998. *800 Mhz SMR Second Report and Order,* 12 FCC Rcd. at 19096–19098, ¶¶ 40–44. All requests filed after June 8, 1998, but prior to the publication of the *Goodman/Chan Order* in the **Federal Register**, will, therefore, be dismissed as untimely. Only Goodman/Chan Receivership licensees and similarly situated licensees are eligible for the temporary relief provided for in the *Goodman/Chan Recon Order* and, therefore, only they may file or refile for this relief within ninety days after the *Goodman/Chan Order* is published in the **Federal Register**.

All such transfer and assignment requests must be accompanied by a public interest statement, pursuant to § 90.153 of the Commission's rules, 47 CFR 90.153; *see also* 47 U.S.C. § 310(d), which should include, at a minimum, the following information: (1) a certification from the assignor that the assignor is either a Goodman/Chan Receivership licensee or a similarly situated licensee, including a brief description of facts supporting the assignor's claimed status; (2) a certification from the assignee that it is satisfied, based on its due diligence, that the assignor is either a Goodman/Chan Receivership licensee or a similarly situated licensee; and (3) a demonstration as to how the grant will either facilitate the relocation of incumbent licensees from the upper 200 channels to the lower band 800 Mhz SMR channels or facilitate geographic licensing of the lower channels themselves. Failure to make this showing will constitute a defective application and will result in dismissal of the application pursuant to § 90.161(b)(6) of the Commission's rules. 47 CFR 90.161(b)(6).

Federal Communications Commission.

Daniel Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98–22886 Filed 8–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, September 1, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Matter related solely to the Commission's internal personnel decisions, or internal rules and practices. (11 CFR § 2.4(b)(1)).
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Discussion involves investigatory records compiled for law enforcement purposes, and production would disclose investigative techniques. (11 CFR § 2.4(b)(5)).
Premature disclosure would be likely to have considerable adverse effect on the implementation of a proposed Commission action. (11 CFR § 2.4(b)(6)).

DATE AND TIME: Wednesday, September 2, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1998–11: John A. Ramirez on behalf of Patriot Holdings (continued from meeting of August 20, 1998).
Advisory Opinion 1998–15: Fitzgerald for Senate, Inc., by Richard A. Roggeveen, Treasurer (continued from meeting of August 20, 1998).
Advisory Opinion 1998–17: Daniels Cablevision, Inc. by counsel, John C. Dodge.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–23207 Filed 8–25–98; 3:03 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 203–011198–009

Title: Puerto Rico/Caribbean Discussion Agreement.

Parties:

Crowley American Transport
NPR, Inc.
Dole Ocean Liner Express
Sea-Land Service, Inc.

Synopsis: The Federal Maritime Commission hereby gives notice, pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1701 et. seq., that it has requested the agreement parties to submit additional information regarding their agreement. Further information is necessary so the Commission can determine the impact of the proposed agreement modification. This action prevents the agreement from becoming effective as originally scheduled.

By Order of the Federal Maritime Commission.

Dated: August 24, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–22975 Filed 8–26–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their viewsin writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Flag Financial Corporation LaGrange, Georgia; to merge with Heart of Georgia Bancshares, Inc., Mount Vernon, Georgia, and thereby indirectly acquire Mount Vernon Bank, Mount Vernon, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee, and its second tier subsidiary, Union Planters Holding Corporation, Memphis, Tennessee; to merge with LaPlace Bancshares, Inc., LaPlace, Louisiana, and thereby indirectly acquire Bank of LaPlace of St. John The Baptist Parish, Louisiana, LaPlace, Louisiana .

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Gilmer Bankshares, Inc., Gilmer, Texas, and First Gilmer Delaware Holdings, Ltd., Wilmington, Delaware; to acquire 100 percent of the voting shares of Security State Bank, Ore City, Texas.

Board of Governors of the Federal Reserve System, August 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–23078 Filed 8–26–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota, Norwest Mortgage, Inc., Des Moines, Iowa, and Norwest Ventures, LLC, Des Moines, Iowa; to sell 50 percent of Edina Realty Mortgage, LLC, Minneapolis, Minnesota, an indirect non-bank subsidiary, to Edina Financial Services, Inc., Edina, Minnesota, an indirect wholly-owned subsidiary of MidAmerican Energy Holding Company, and thereby form a joint venture to engage in a residential mortgage lending and similar activities, pursuant to § 225.28(b)(1) of Regulation Y.

2. Norwest Corporation, Minneapolis, Minnesota, Norwest Mortgage, Inc., Des Moines, Iowa, and Norwest Asset Company, Des Moines, Iowa; to sell 50 percent of RELS Title Services, LLC, Edina, Minnesota, and 50 percent of RELS, LLC, San Diego, California, both indirect non-bank subsidiaries, to, respectively, First American Title Insurance Company and First American Real Estate Solutions, LLC, both of Santa Ana, California, and thereby form joint ventures to engage in residential real estate appraisal, consumer income verification, consumer credit reporting activities, title insurance agency, escrow and other residential real estate closing services activities, pursuant to §§ 225.28(b)(2) and (b)(11)(vii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–23079 Filed 8–26–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]

Submission for OMB Review; Comment Request Entitled Contract Financing

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to an existing OMB clearance (3090–0080).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Contract Financing. The information collection was previously published in the **Federal Register** on June 17, 1998 at 63 FR 33064, allowing for a 60-day public comment period. No comments were received.

DATES: Comment Due Date. September 28, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0080, concerning Contract Financing. Offerors are required to identify whether items are foreign source end products and the dollar amount of import duty for each product.

B. Annual Reporting Burden

Respondents: 2,000; *annual responses:* 2,000; *average hours per response:* .1; *burden hours:* 200.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: August 20, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–22968 Filed 8–26–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112]

Submission for OMB Review; Comment Request Entitled State Agency Monthly Donation Report of Surplus Personal Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0112).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property. The information collection was previously published in the **Federal Register** on June 19, 1998 at 63 FR 33667, allowing for a 60-day public comment period. No comments were received.

DATES: *Comment Due Date:* September 28, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Andrea Dingle, Federal Supply Service (703) 305–6190.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0112, concerning GSA form 3040, State Agency Monthly Donation Report of Surplus Personal Property. This report complies with Public Law 94–519 which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55; *annual responses:* 220; *average hours per response:* 1; *burden hours:* 220.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: August 20, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–22969 Filed 8–26–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; GSA Distribution System Practices for Acquiring Freight Transportation Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice requesting comment on proposed GSA changes to transportation procedures involving Distribution System traffic.

SUMMARY: For General Services Administration (GSA) Distribution System traffic, GSA proposes in future Requests for Offers (RFO's) to require shipment status notices, rate submission by the first 3 digits of the United States Postal Service (USPS) ZIP Code (including normal transit time), paying carriers automatically upon notification of delivery, and basing mileage upon PC Miler from ALK Associates. These changes are intended to enhance customer service, improve shipment visibility, assist GSA with identifying best value services, and reduce the operational costs of the carriers and GSA.

DATES: Please submit your comments by October 26, 1998.

ADDRESSES: Mail comments to the Transportation Management Division (FBF), Washington DC 20406, Attn: RFO Revision **Federal Register** Notice. GSA will consider your comments prior to finalizing these changes.

FOR FURTHER INFORMATION CONTACT: Blaine Jacobs, Transportation Management Division (FBF), Office of Transportation and Property Management, 1941 Jefferson Davis Highway, Arlington, VA 22202; telephone number: (703) 305–7317; e-mail: blaine. jackobs@gsa.gov.

SUPPLEMENTARY INFORMATION: For GSA Distribution System traffic, GSA proposes to:

(a) Require carriers to provide Shipment Status Notices using either the ANSI X.12 Transaction Set 214 format or a GSA proprietary file format;

(b) Require carriers to submit territorial offers by the first 3 digits of the USPS ZIP Code and include their normal transit time to the 3 digit ZIP Code area in their offer;

(c) Pre-price shipments and base payments on the mileage as determined by PC Miler, from ALK Associates, and;

(D) Pay carriers after receipt of delivery information without requiring carrier invoicing.

Dated: August 21, 1998.

Allan J. Zaic,

Assistant Commissioner, Office of Transportation and Property Management.

[FR Doc. 98–23041 Filed 8–26–98; 8:45 am]

BILLING CODE 6820–24–M

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Updated Model Qualified Trust Certificates and Draft Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted a total of executive branch qualified trust model certificates and draft documents for three-year extension of Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. In addition, the Office of Government Ethics has submitted a new set of model blind trust communications formats for paperwork review and three-year approval for the first time.

DATES: Comments on this proposal should be received by September 28, 1998.

ADDRESSES: Comments should be sent to Mr. Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Associate General Counsel, Office of Government Ethics, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000, ext. 1110; TDD: 202–

208–8025; FAX: 202–208–8037. A copy of all of the draft updated model trust documents and certificates, as well as the remainder of the OGE submission to OMB, may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (the ''Ethics Act''), is the sponsoring agency for model certificates and draft trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics Act, 5 U.S.C. app., § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. Approval of OGE can be sought by Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials for Ethics Act qualified blind or diversified trusts. The various model certificates and trust documents are utilized by OGE and settlers, trustees and other fiduciaries in establishing and administering the qualified trusts.

The Office of Government Ethics has submitted, after a first round notice and comment period, updated versions of eleven qualified trust certificates and model documents (all included under OMB control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The current paperwork approval for the certificates and model documents is scheduled to expire soon. The updating substantive changes reflect minor improvements to the various forms that result from practice with the qualified trust program over the past several years. The Office of Government Ethics has also determined that a new twelfth model forms set, entitled Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications) and which consists of standard trustee reporting formats and instructions for communicating with OGE, will be of value in administering the Ethics Act qualified trust program. Accordingly, OGE has sought initial three-year paperwork approval from OMB.

On April 24, 1998, at 63 **Federal Register** 20411–20412, OGE published a first round paperwork notice of the updated executive branch qualified trust model certificates and draft documents. During the public comment period on that advance notice, OGE received just a few requests by persons outside OGE for copies of the updated drafts and no comment letters.

Furthermore, OGE has adopted a few revisions to the procedural paperwork notices to all of the model certificates and draft trust documents. Pursuant to the 1995 revisions to the Paperwork Reduction Act, OGE has added a statement to the model forms that an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number. A parenthetical reference has been made to the location of that number (on the top of the first page or in the heading of the various model documents). The caption of the public burden information section has been changed to indicate the inclusion of the Paperwork Reduction Act statement. In addition, OGE has added the OMB paperwork control number, 3209–0007, to the headings of the model certificates, as codified in appendixes A and B to part 2634. Moreover, a couple of changes since the first round notice modify the wording of the sentences on paperwork comments in each of the models (now including the certificates) to change the verb tense, clarify the current title of the OGE Associate Director for Administration and remove OMB as an additional contact point.

The various model trust certificates and documents as proposed to be modified are available to the public upon request as indicated in the **FOR FURTHER INFORMATION CONTACT** section above.

There are two categories of information collection requirements which OGE has submitted, each with its own related reporting certificates or model documents which are subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified Trust Administration—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406 (a)(3) and (b), 2634.408, 2634.409 and appendixes A and B of part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C—OGE will revise these appendixes as explained above in a final rule document for publication in the **Federal Register** once OMB paperwork clearance for this overall package is obtained); and

ii. Qualified Trust Drafting—5 CFR 2634.401(c)(1)(i) & (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 the nine implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (for Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (for Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities).

As noted above, OGE is seeking a three-year extension of OMB paperwork approval for all of these certificates and documents, except for the new Blind Trust Communications set (item ii(A) above) as to which a first-time three-year paperwork clearance is being sought. Once completed, the new communications formats and, as now redetermined by OGE, the confidentiality agreements (items ii(A), (I) and (J) above) would not be available to the public due to the fact that they contain sensitive confidential information. All the other completed model trust certificates and draft documents are publicly available based upon proper Ethics Act request (by filling out an OGE Form 201 access form).

The total annual public reporting burden represents the time involved for completing qualified trust certificates and documents drafts, which are processed by OGE. The burden is based on the amount of time imposed on private citizens. Virtually all filers/document users are private trust administrators and other private representatives who help to set up and maintain the qualified blind and diversified trusts. The detailed paperwork estimated below for the various trust certificates and model documents are based primarily on OGE's experience with administration of the qualified trust program.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 10; Private citizen filers (100%): 10; OGE-processed

certificates (private citizens): 10; OGE burden hours (20 minutes/certificate): 3.

B. Certificate of Compliance: total filers (executive branch): 35; Private citizen filers (100%): 35; OGE-processed certificates (private citizens): 35; OGE burden hours (20 minutes/certificate): 12; and

ii. Model Qualified Trust Drafts:

A. Blind Trust Communications: Total Users (executive branch): 35; Private citizen users (100%): 35; OGE-processed drafts (private citizens): 210 (based on an average of six communications per user per year); OGE burden hours (20 minutes/communications): 70.

B. Model Qualified Blind Trust Draft: Total Users (executive branch): 10; Private citizen users (100%): 10; OGE-processed drafts (private citizens): 10; OGE burden hours (100 hours/draft): 1,000.

C. Model Qualified Diversified Trust Draft: Total Users (executive branch): 15; Private citizen users (100%): 15; OGE-processed drafts (private citizens): 15; OGE burden hours (100 hours/draft): 1,500.

D.–H. Each of the five remaining model qualified trust modified drafts involves: Total users (executive branch): 2; Private citizen users (100%): 2; OGE-processed drafts (private citizens): 2, multiplied by 5 (five different drafts) = 10; OGE burden hours (100 hours/draft): 200, multiplied by 5 (five different drafts) = 1,000.

I.–J. Each of the two model confidentiality agreements involves: Total users (executive branch): 2; Private citizens users (100%): 2; OGE-processed agreements (private citizens): 2, multiplied by 2 (two different drafts) = 4; OGE burden hours (50 hours/agreement): 100, multiplied by 2 (two different drafts) = 200.

Based on these estimates, the total number of forms expected annually at OGE is 294, with a cumulative total of 3,785 burden hours.

Public comment is invited on each aspect of the model qualified trust certificates and trust document drafts, and underlying regulatory provisions, as set forth in this second round paperwork notice, including specifically views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: August 21, 1998.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

[FR Doc. 98–23088 Filed 8–26–98; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will continue addressing (1) the protection of the rights and welfare of human subjects in research involving persons with mental disorders that may affect decisionmaking capacity, (2) issues in the research use of human biological materials, and (3) a proposed comprehensive human subjects project. The meeting is open to the public and opportunities for statements by the public will be provided on September 17, 1998 from 11:30 am to 12 Noon.

DATES/TIMES: September 16, 1998, 8:00 am–5:00 pm; and September 17, 1998, 8:30 am–5:00 pm.

LOCATION: The Virginia Ballroom, Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, Virginia.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–22966 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9:00 a.m.–5:30 p.m., September 15, 1998; 9:00 a.m.–5:00 p.m., September 16, 1998.

Place: Conference Room 505A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Status: Open.

Purpose: The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of the HHS Data Council and the status of HHS activities in implementing the administrative simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will be briefed on the status of the International Classification of Diseases (ICD–10 CM) and ICD–10–PCS, as well as followup to the Report of the President's Commission on Quality and Consumer Protection in the Health Care Industry. In addition, the Committee plans to consider comments to submit to HHS in response to HIPAA Notices of Proposed Rulemaking, a draft concept paper on health applications in the National Information Infrastructure, and revisions to member guidelines for dealing with the media and external organizations. Subcommittee breakout sessions are planned. All topics are tentative and subject to change.

Please check the NCVHS website, where a detailed agenda will be posted prior to the meeting.

Contact Person for More Information: Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, telephone (202) 690–7100, or Majorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: August 21, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–23042 Filed 8–26–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee Meeting

The National Vaccine Advisory Committee, Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: National Vaccine Advisory Committee (NVAC) Immunization Registries Workgroup.

Time and Date: 8 a.m.–5 p.m., September 2, 1998.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, Washington, DC 20036, 202/347–3000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 30 people.

Purpose: To discuss and explore the development of a Plan of Action for community and state based immunization registries.

Matters to be Discussed: Agenda items will include and address the following: themes and issues identified during public meetings; special issues such as Immigration and Naturalization Services, Privacy and Confidentiality; Plan of Action (format, goals/recommendations and roles); and an outline of a timeline.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robb Linkins, Ph.D., M.P.H., Chief, Systems Development Branch, Data Management Division, NIP, CDC, 1600 Clifton Road, NE, M/S E–62, Atlanta, Georgia 30333, telephone 404/639–8728, e-mail rxl3@cdc.gov.

Dated: August 20, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–22973 Filed 8–26–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0706]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,9-bis(3,5-dimethylphenyl)anthra(2,1,9-def:6,5,10-d′e′f′)diisoquinoline-1,3,8,10(2H,9H)-tetrone (C.I. Pigment Red 149) as a colorant for all polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4620) has been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* to provide for the safe use of 2,9-bis(3,5-dimethylphenyl)anthra(2,1,9-def:6,5,10-d′e′f′)diisoquinoline-1,3,8,10(2H,9H)-tetrone (C.I. Pigment Red 149) as a colorant for all polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 5, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–23032 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0705]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer in polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4618) has been filed by Ciba Specialty Chemicals Corp., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer for polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 31, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–23031 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0645]

Medical Device Warning Letter Draft Pilot; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is planning to initiate a pilot program involving the medical device industry that is a continuation of the ''medical device industry initiatives.'' This draft pilot concerns the issuance of warning letters for quality system, premarket notification submission (510(k)), and labeling violations. This draft pilot is intended to optimize resource utilization, enhance communication between industry and FDA, and provide firms with incentives to promptly correct violations or deficiencies. The draft pilot includes eligibility criteria and procedures for the issuance of warning letters and will not be implemented until after the public comment period has expired.

DATES: Written comments on the draft pilot may be submitted by October 13, 1998.

ADDRESSES: Submit written comments on the draft pilot to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft pilot.

FOR FURTHER INFORMATION CONTACT:

Device quality system warning letter draft pilot: Jeffrey B. Governale, Division of Compliance Policy (HFC–230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411, FAX 301–827–0482.

Premarket notification (510(k)) and labeling warning letter draft pilot: Chester T. Reynolds, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4618, FAX 301–594–4610.

SUPPLEMENTARY INFORMATION:

I. Background

During recent FDA/medical device industry grassroots forums, several issues were discussed concerning FDA's interaction with the medical device industry. After considering these issues, the agency plans to initiate a pilot program that will last for 18 months, and then be formally evaluated. The draft pilot includes procedures for the issuance of warning letters for quality system (21 CFR part 820), 510(k) (part 807, subpart E) (21 CFR part 807, subpart E), and labeling (e.g., 21 CFR part 800, subpart B; part 801, and part 809, subparts B and C) violations. This draft pilot is currently restricted to the medical device industry and is a continuation of the medical device industry initiatives.

FDA currently maintains contracts with the States of California, Colorado, and Texas that will expire on September 30, 1998, to conduct medical device inspections on behalf of FDA. This draft pilot does not include those inspections done under State contract for FDA. However, noncontract medical device inspections done by FDA personnel in these States will be eligible for this draft pilot.

The purpose of this draft pilot is to optimize resource utilization, enhance communication between the medical device industry and FDA, and provide firms with incentives to promptly correct violations or deficiencies. Implementation of this draft pilot will not impact on violative situations where enforcement action is necessary to protect the public health.

The medical device warning letter draft pilot is being issued as a guidance document and represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This pilot is being issued as a draft level 1 guidance consistent with GGP's.

The draft pilot consists of two parts that are described as follows:

I. Device Quality System Warning Letter Draft Pilot

Dates: (insert initiation and ending dates 18 months apart)

This draft pilot is restricted to the medical device industry and is a continuation of the medical device industry initiatives.

Following a domestic device quality system inspection which finds current good manufacturing practice (CGMP) deficiencies (situation 1, compliance program (CP) 7382.830—part V) that warrant a warning letter, the establishment is to be given 15 working days to respond from the issuance date of the list of inspectional observations (FDA–483). If the firm's written response to the FDA–483 is deemed to be satisfactory by the district office, then a warning letter should not be issued.

This draft pilot does not apply to:

1. Nonquality system inspections such as mammography, radiological health, and bioresearch inspections;

2. Establishments that manufacture devices as well as other FDA regulated products;

3. Establishments that manufacture devices that are regulated by the Center for Biologics Evaluation and Research (CBER);

4. Recidivous establishments as defined in CP 7382.830;

5. An inspection that uncovered CGMP, premarket notification submission (510(k)), or labeling deficiencies that may cause serious adverse health consequences;

6. A compliance followup inspection when the previous inspection resulted in a warning letter or regulatory action for quality system, 510(k), or labeling violations;

7. An inspection that disclosed other significant device violations (e.g., medical device reporting or premarket approval) in addition to quality system, 510(k), or labeling violations which warrant the issuance of a warning letter or regulatory action; or

8. A situation where the firm's management failed to make available to FDA personnel all requested information and records required by regulations or laws enforced by FDA.

If the district is essentially satisfied with the written response to the FDA–483 but needs further clarification, it may seek additional information via untitled correspondence, meetings, or telephone.

If the firm fails to respond to the FDA–483, a warning letter should be sent to the establishment once the 15 working day period has expired. If the district receives a response to the FDA–483 within 15 working days, the district has 15 working days from the receipt date to determine whether the response is satisfactory. If it is necessary for the district to consult with the Center for Devices and Radiological Health's Office of Compliance for technical assistance, the latter office has 15 working days to respond to the district and then the district has 15 working days to respond to the establishment. If the written response to the FDA–483 is determined to be unsatisfactory, the district should send a warning letter to the establishment.

When no warning letter is issued by the district office due to the firm's satisfactory written response, the postinspectional notification letter (see attachment 1 of this

document) should be sent to the establishment.

When a decision is made not to send a warning letter due to a satisfactory written response from the firm, the inspection should be classified as voluntary action indicated (VAI) and the profile should be designated as acceptable.

When no warning letter is issued, as described previously, and the next inspection discloses situation 1 CGMP deficiencies, then FDA personnel should proceed as if a warning letter had been issued for the previous inspection and consider appropriate enforcement action. (See the graphic for the device quality system warning letter draft pilot as attachment 2 and table 1 for attachment 3.)

This draft pilot will be evaluated by FDA at the end of the 18-month period.

Copies of all domestic warning letters that include a device CGMP adulteration charge (section 501(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(h))) for inspections that are initiated between (insert initiation date) and (insert date 18 months after start date) should be forwarded to the Division of Compliance Management and Operations (DCMO)/Office of Enforcement (OE) (HFC–210) with a cover page. (See attachment 4 for a copy of this cover page.)

When warning letters are not issued for situation 1 CGMP deficiencies under this draft pilot, copies of the postinspectional notification letters issued for the inspections initiated between the above dates should be sent to Jeffrey B. Governale, Division of Compliance Policy (DCP)/OE (HFC–230).

Any questions concerning this draft pilot should be directed to Jeffrey B. Governale via telephone (301–827–0411), facsimile (301–827–0482), or electronic mail (Jeffrey Governale@OE@FDAORAHQ).

Attachments: As stated

Attachment 1—Model Postinspectional Notification Letter for Device Quality System Warning Letter Draft Pilot

[Name and title of most responsible individual]

[Establishment's name and address]

Dear _____ :

The Food and Drug Administration (FDA) conducted an inspection of your firm's [description] facility at [address] on [date]. The inspection covered the following devices:

[list devices and their profile classes]

At the end of the inspection, the FDA investigator left a list of inspectional observations (FDA–483) at your firm. We have received your firm's written response, dated [date] to that FDA–483. Copies of this response and the FDA–483 are enclosed.

While this inspection found deficiencies of your quality system that would warrant a warning letter if not corrected, your written response has satisfied us that you either have taken or are taking appropriate corrective actions. At this time, FDA does not intend to take further action based on these inspectional findings. The agency is relying on your commitment regarding corrective actions and, should we later observe that the deviations from the quality system regulation have not been remedied, future regulatory action (e.g., seizure, injunction and civil penalties) may be taken without further notice.

Based upon your corrective action, the deficiencies noted during FDA's inspection will not affect applicable pending premarket submissions or export certificates for devices manufactured at your facility that were specifically inspected. This information is available to Federal agencies when they consider awarding contracts. There may be other devices and operations of your firm for which the conclusions from this inspection are not applicable. The agency may separately inspect your firm's facilities to address the quality system regulation in these areas.

Your firm has an ongoing responsibility to conduct internal self-audits to assure you are continuing to maintain conformance with the quality system regulation.

For further information, please contact the following individual at this office:

[name and telephone number]

Sincerely,

District Director

_____ District Office

Enclosures

bcc:

HFC–230 (Governale)

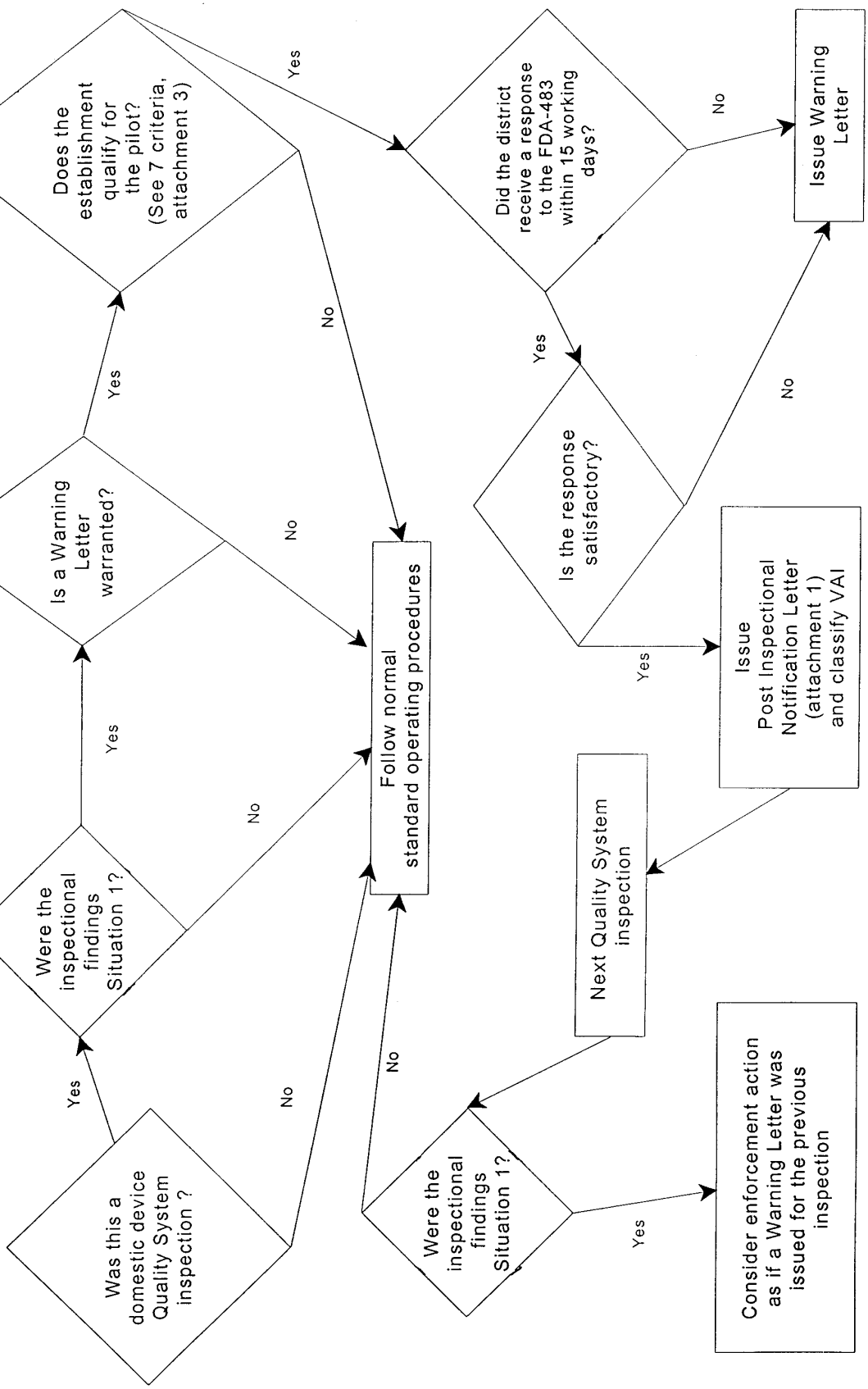
(district office internal distribution)

BILLING CODE 4160–01–F

Attachment 2

Device Quality System Warning Letter Pilot

DRAFT



BILLING CODE 4160–01–C

Attachment 3—Device Quality System Warning Letter Draft Pilot

Important

If one or more of your answers to any of the questions are different than those found in the answer column of this Table, then this pilot does *not* apply to your situation. You should follow FDA's normal standard operating procedures instead.

TABLE 1

Number	Question	Answer
1	In addition to devices, does the establishment manufacture other FDA regulated products?	No
2	Does the establishment manufacture devices that are regulated by CBER?	No
3	Is the establishment a recidivous firm per CP 7382.830?	No
4	Did the inspection uncover CGMP, 510(k), or labeling deficiencies that may cause serious adverse health consequences?	No
5	Was this a compliance followup inspection to a warning letter or regulatory action for quality system, 510(k), or labeling violations?	No
6	Did the inspection disclose other significant device violations in addition to quality system, 510(k), or labeling violations which warrant the issuance of a warning letter or regulatory action?	No
7	Did the firm's management make available to FDA all required information that was requested?	Yes

Attachment 4—Cover Page for the Device Quality System Warning Letter Draft Pilot

To: FDA/ORA/OE/DCMO (HFC–210)
(mailing address: 5600 Fishers Lane, Rockville, MD 20857–001)
From: _____
_____District (HFR–_____)
Establishment's name and address:
Date inspection was initiated:
(This cover page should be attached to each warning letter that includes a device CGMP adulteration charge (under section 501(h) of the act). Please refer to the device quality system warning letter pilot before filling out this cover page.)

The attached warning letter was issued for device CGMP deficiencies for one or more of the following reasons. Please check the appropriate reason(s):

_____ The establishment did not respond to the FDA–483 within 15 working days.

_____ The establishment provided an unsatisfactory response to the FDA–483 within 15 working days.

_____ The establishment manufactures devices as well as other FDA regulated products.

_____ The establishment manufactures devices that are regulated by CBER.

_____ The inspection uncovered CGMP, 510(k), or labeling deficiencies that may cause serious adverse health consequences.

_____ The inspection disclosed other significant device violations (e.g., medical device reporting or premarket approval) in addition to quality system, 510(k), or labeling violations which warrant the issuance of a warning letter or regulatory action.

_____ The firm's management failed to make available to FDA personnel all requested information and records required by regulations or laws enforced by FDA.

Please record any comments that the district may have concerning this pilot on the back of this cover page.

II. Premarket Notification (510(k)) and Labeling Warning Letter Draft Pilot

Dates: (insert initiation and ending dates 18 months apart)

A. Background

The impetus for this draft pilot has its origins in FDA grassroots meetings with the medical device industry. During these meetings warning letters, for both premarket notification submission (510(k)) and labeling violations, were identified as topics for discussion. Manufacturers contend that:

1. They are often unaware of the agency's concerns about 510(k) and labeling issues until they receive a warning letter;

2. Information about these concerns is often available at the time of the inspection; and

3. If notified during the inspection manufacturers would have an opportunity to respond, and perhaps resolve, the concerns identified by the investigators.

Consequently, this draft pilot has been developed in response to the device industry's concerns. The purpose of this draft pilot is to determine if notifying firms about 510(k) and labeling issues, in lieu of a warning letter, will result in the efficient resolution of the issues.

B. Draft Pilot Procedures

The 510(k) and labeling warning letter draft pilot does not apply to the following situations:

1. Advertising and promotion issues;

2. Establishments that manufacture devices as well as other FDA regulated products;

3. Establishments that manufacture devices that are regulated by the Center for Biologics Evaluation and Research (CBER);

4. An inspection that uncovered CGMP, 510(k), or labeling deficiencies that may cause serious adverse health consequences;

5. A compliance followup inspection when the previous inspection resulted in a warning letter or regulatory action for quality system, 510(k), or labeling violations;

6. An inspection that disclosed other significant device violations (e.g., medical device reporting or premarket approval) in addition to quality system, 510(k), or labeling violations which warrant the issuance of a warning letter or regulatory action;

7. A situation where the firm's management failed to make available to FDA personnel all requested information and records required by regulations or laws enforced by FDA;

8. Devices that were never cleared by FDA via a 510(k) and were not exempted from this requirement (§ 807.81(a)(1) or (a)(2));

9. A major change or modification in the intended use of the device (§ 807.81(a)(3)(ii)); or

10. Electronic products that emit radiation as defined in 21 CFR 1000.3.

Domestic device inspection reports, with endorsements, that identify possible 510(k) violations of § 807.81(a)(3)(i) (a change or modification in the device that could significantly affect the safety or effectiveness of the device) and/or possible labeling violations should be forwarded to the Office of Compliance (OC), Center for Devices and Radiological Health (CDRH), HFZ–306. If CDRH believes that a warning letter situation exits, OC will notify the establishment via an untitled letter within 30 working days. The untitled letter will inform the establishment of the need to correct the violation by submitting either a new 510(k) or an appropriate labeling change. CDRH will send a copy of this letter to the home district. If a warning letter situation/correction is not warranted, OC will notify the district by memorandum, facsimile, or electronic mail. The district will inform the establishment, in writing, that no correction is required.

Firms will have 15 working days from the date of a CDRH untitled letter to respond. CDRH will have 30 working days to evaluate the firm's response. An exception to this timeframe may occur if CDRH has to consult with the district and/or the firm. If CDRH determines that a firm's response is satisfactory, a warning letter should not be issued. If CDRH is essentially satisfied with the firm's response but needs further clarification, it may seek additional information via telephone or untitled correspondence.

If a firm fails to respond to CDRH's untitled letter, a warning letter should be sent to the establishment by CDRH when the 15 working day timeframe has expired. If CDRH receives a response to the untitled letter within 15 working days, CDRH has 30 working days from the receipt date to determine whether the response is satisfactory. If the written response is determined to be unsatisfactory, CDRH should send a warning letter to the establishment.

When no warning letter is issued by CDRH due to a firm's satisfactory written response, a postinspectional notification letter should be sent by CDRH to the establishment, with

a copy to the home district, which includes the following language:

''While this inspection found deficiencies concerning (insert 'premarket notification (510(k)),' 'labeling,' or both as appropriate] that would warrant a warning letter if uncorrected, your written response has satisfied us that you either have taken or are taking appropriate corrective actions. At this time, FDA does not intend to take further action based on these inspectional findings. The agency is relying on your commitment regarding corrective actions and, should we later observe that these deficiencies have not been remedied, future regulatory action (e.g. seizure, injunction and civil penalties) may be taken without further notice.''

When a CDRH decision is made not to send a warning letter due to a satisfactory written response from the firm, the district should classify the inspection as VAI and the profile as acceptable for the labeling or 510(k) issues.

When no warning letter is issued, as described previously, and the next inspection of the firm discloses significant 510(k) and/or labeling deficiencies, then FDA personnel should proceed as if a warning letter had been issued for the previous inspection and consider appropriate enforcement action.

C. Administrative

Copies of all warning letters will be forwarded to the Division of Compliance Management and Operations (DCMO), Office of Enforcement (OE)(HFC–210). When Warning Letters are not issued for 510(k) or labeling deficiencies under this pilot, copies of the postinspectional notification letters issued for inspections that are initiated between (insert initiation date) and (insert date that is 18 months after the initiation date) should be sent to Jeffrey B. Governale, Division of Compliance Policy (DCP)/OE, HFC–230.

CDRH's OC will monitor the warning and postinspectional notification letters and evaluate the pilot 1 year after it begins. Any questions about this pilot should be directed to Chester T. Reynolds, OC/CDRH, HFZ–300.

II. Request for Comments

Interested persons may, on or before October 13, 1998, submit to the Dockets Management Branch (address above) written comments on the draft pilot. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The agency will review all comments, but in issuing a final pilot program need not specifically address every comment. The agency will make changes to the draft pilot in response to comments, as appropriate. Copies of the draft pilot and received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

A copy of the draft pilot may also be downloaded to a personal computer with access to the World Wide Web (WWW). The Office of Regulatory Affairs (ORA) and the CDRH home pages include the draft pilot and may be accessed at ''http://www.fda.gov/ora'' or ''http://www.fda.gov/cdrh'', respectively. The draft pilot will be available on the compliance references or compliance information pages for ORA and CDRH, respectively.

Dated: August 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23027 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee with representation from the Anti-Infective Drugs and Reproductive Health Drugs Advisory Committees.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 11, 1998, 8:30 a.m. to 5 p.m.

Location: Holiday Inn-Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Rhonda W. Stover or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee with representation from the Anti-Infective and Reproductive Health Drugs Advisory Committees will discuss class labeling for over-the-counter (OTC) vaginal antifungal drug products. In the **Federal Register** of February 27, 1997 (62 FR 9024), the agency published a proposed rule intended to enable consumers to better read and understand OTC drug product labeling and to better apply this information in the labeling to the safe and effective use of such products. An important element of FDA's proposed rule is a standardized labeling format for OTC drug products. The agency has developed class labeling for OTC vaginal antifungal drug products in accordance with the February 27, 1997, proposed rule and the agency's draft guidance document for industry entitled ''Class Labeling of OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis)'' and other related issues. The draft guidance document is intended to provide guidance for both the carton and educational brochure. Single copies of the guidance document can be obtained by contacting the Drug Information Branch, Division of Communications Management (HFD–210), 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573 or the Internet ''http://www.fda.gov/cder/guidance/index.htm''.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 4, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 4, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 20, 1998.

Sharon Smith-Holston,

Acting Commissioner of Food and Drugs.

[FR Doc. 98–23025 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0488]

Agency Information Collection Activities; 1998 and Year 2000 Update of a National Survey of Prescription Drug Information Provided to Patients; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''1998 and Year 2000 Updates of a National Survey of Prescription Drug Information Provided to Patients'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Thursday, December 11, 1997 (62 FR 65273), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection and has assigned OMB control number 0910–0279. The approval expires on May 31, 1999.

Dated: August 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23028 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0693]

Draft ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test.'' The draft guidance document, when finalized, is intended to provide guidance to applicants who wish to market an allergenic product or allergen patch test for the completion of the chemistry, manufacturing and controls (CMC) section and the establishment description section of revised Form FDA 356h entitled ''Application to Market a New Drug, Biologic, or an Antibiotic for Human Use.'' This draft guidance document is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiatives and the Food and Drug Administration Modernization Act of 1997, and is intended to reduce unnecessary burdens on industry without diminishing public health protection.

DATES: Written comments may be provided at any time, however, comments should be submitted by October 26, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test.'' The draft guidance document, when finalized, is intended to provide manufacturers of allergenic products and allergen patch tests guidance on the kinds of information that should be gathered to adequately describe steps of manufacturing, product validation, final container filling, and other aspects of production. The draft also provides guidance on how the information should be formatted and organized when submitted with Form FDA 356h entitled ''Application to Market a New Drug, Biologic, or an Antibiotic for Human Use.''

In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of a new harmonized Form FDA 356h entitled ''Application to Market a New Drug, Biologic, or an Antibiotic for Human Use.'' The new harmonized form is intended to be used by applicants for all drug and biological products. The new harmonized form, when fully implemented, will allow biological product manufacturers to submit a single application, the biologics license application, instead of two separate license application submissions (product license application and establishment license application).

This draft guidance document represents the agency's current thinking with regard to the content and format of the CMC and establishment description sections of an application to market an

allergenic extract or allergen patch test. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by October 26, 1998, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: August 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23024 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0307]

Draft Guidance for Industry; Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 24, 1998, the comment period for the draft guidance document that appeared in the **Federal Register** of June 12, 1998 (63 FR 32219). The draft guidance document addressed issues concerning the exportation of human drugs, animal drugs, biologics, food additives, and devices under the FDA Export Reform and Enhancement Act, as well as the importation of components, parts, accessories, or other articles for incorporation or further processing into articles intended for export. This action is being taken in response to a request from the Health Industry Manufacturers Association.

DATES: Written comments by November 24, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 12, 1998 (63 FR 32219), FDA published a draft guidance document entitled ''FDA Draft Guidance for Industry on: Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996.''

Enacted and later amended in 1996, the FDA Export Reform and Enhancement Act (Pub. L. 104–134, as amended by Pub. L. 104–180) significantly changed the export requirements for human drugs, animal drugs, biologics, devices, and, to a limited extent, food additives. For example, before the law was enacted, most exports of unapproved new drug products could only be made to 21 countries identified in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382), and these exports were subject to various restrictions. The FDA Export Reform and Enhancement Act amended section 802 of the act to allow, among other things, the export of unapproved new drugs to any country in the world if the drug complies with the laws of the importing country and has valid marketing authorization from any of the following countries: Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the countries in the European Union (EU) and the European Economic Area (EEA). (Currently, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, Iceland, Liechtenstein, and Norway. The list of countries will expand automatically if any country accedes to the EU or becomes a member of the EEA.)

The draft guidance document provides information on the statutory requirements for exporting human drugs, animal drugs, biologics, and medical devices; general requirements for products exported under section 801 of the act (21 U.S.C. 381); labeling requirements for drugs and biologics exported under section 801(e) of the act; requirements for exports of unapproved drugs, biologics, and devices under section 802(b) of the act; requirements for exports of unapproved drugs and devices for investigational use; requirements for exports of unapproved drugs and devices in anticipation of foreign approval; requirements for exports of drugs and devices for diagnosing, preventing, or treating a tropical disease or a disease ''not of significant prevalence in the United States;'' export notifications to FDA; and ''import for export.''

The draft guidance document represents the agency's current thinking on exports and imports-for-export under sections 801 and 802 of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

On June 23, 1998, the Health Industry Manufacturers Association (HIMA) requested a 90-day extension of the comment period. HIMA explained that ''the complexity of the issues with the additional complication of summer vacation schedules prevents us from providing substantive comments within the time provided.'' The agency considered HIMA's request and, through this notice, is extending the comment period by 90 days until November 24, 1998.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. The draft

guidance document may also be seen on FDA's web site at ''www.FDA.gov''.

Dated: August 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23026 Filed 8–24–98; 3:45 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0697]

Compliance Guidance: The Mammography Quality Standards Act Final Regulations Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations.'' This draft guidance document is not final nor is it in effect at this time. The final regulations implementing the Mammography Quality Standards Act of 1992 (the MQSA) will become effective April 28, 1999, and will replace the interim regulations which, under the MQSA, currently regulate mammography facilities. The draft guidance document is intended to assist facilities and their personnel to meet the MQSA final regulations.

DATES: Written comments must be received by November 25, 1998.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the draft guidance document entitled ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit written comments on this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Walid G. Mourad, Center for Devices and Radiological Health (HFZ–240),Food and Drug Administration,1350 Piccard Dr.,Rockville, MD 20850,301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The MQSA was passed on October 27, 1992, to establish national quality standards for mammography. After October 1, 1994, the MQSA required all mammography facilities, except facilities of the U.S. Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA. On October 28, 1997, FDA published the MQSA final regulations in the **Federal Register**. The final regulations will become effective April 28, 1999, and will replace the interim regulations (58 FR 67558 and 58 FR 67565) which, under the MQSA, currently regulate mammography facilities. Development of the guidance began in August 1997 and is based in part on discussions with, and input from, the National Mammography Quality Assurance Advisory Committee.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the final regulations implementing the MQSA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1259) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance document may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations'', device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations'' will be available at http://www.fda.gov/cdrh/dmqrp.html.

IV. Comments

Interested persons may, on or before November 25, 1998, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 7, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–23030 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–254]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. Due to an unanticipated event and the fact that this collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320, we are requesting an emergency review.

With the creation of the Medicare+Choice program, as required by the Balanced Budget Act of 1997 (Pub. L. 105–33), Medicare beneficiaries' health care options were expanded to include coordinated care plans such as Health Maintenance Organizations, Preferred Provider Organizations, Provider-sponsored Organizations, as well as Private Fee-for-Service Plans and Medical Savings Accounts. While the new options bring more flexibility for health care decisions for people with Medicare, they also necessitate the need for a carefully planned, extensive education campaign to assure that Medicare beneficiaries have understanding of the new health plan choices offered by Medicare and how to use HCFA-developed information tools that will be available through an annual publication, a toll-free number and the World Wide Web.

The purpose of this submission is to request approval of a baseline and follow-up survey of beneficiaries in six communities where we are conducting case studies to examine how all of our activities related to the education campaign are working. The baseline survey will be conducted in September and the follow-up survey will be done this winter after all of the material related to the education campaign for this year has been mailed to beneficiaries. Examples of the types of questions that will be asked of beneficiaries include their satisfaction with the availability and usefulness of Medicare information when they need it, where they obtain information for particular Medicare-related decisions, their use of the Handbook and other information sources, their awareness of some of the major messages HCFA is trying to convey in the campaign and the demographics of the respondents.

HCFA is requesting OMB review and approval of this collection within 6 working days of publication of this notice in the **Federal Register**, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 5 working days of the publication of this notice. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New Collection.

Title of Information Collection: National Medicare Education Program Community Survey of Medicare Beneficiaries.

Form Number: HCFA–R–254 (OMB approval #: 0938-NEW).

Use: The primary purpose of the baseline and follow-up survey is to collect information on beneficiary satisfaction with the availability and usefulness of Medicare information when they need it, where beneficiaries obtain information for particular Medicare-related decisions, beneficiary use of the Handbook and other information sources, and their awareness of the major messages HCFA is trying to convey in the campaign. This information will be used in conjunction with other information collected in these six communities through focus groups and interviews to identify problems and make recommendations for ways of improving HCFA's education campaign in future years.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 4,800.

Total Annual Responses: 4,800.

Total Annual Hours Requested: 1,200 hours.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designees referenced below within 5 working days of the publication of this notice in the **Federal Register**:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: John Rudolph HCFA–R–254 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: August 20, 1998.

John Parmigiani,

Acting HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–22860 Filed 8–26–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0253]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send

comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. Due to an unanticipated event and the fact that this collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320, we are requesting an emergency review.

With the creation of the Medicare+Choice program, as required by the Balanced Budget Act of 1997 (Pub. L. 105–33), Medicare beneficiaries' health care options were expanded to include coordinated care plans such as Health Maintenance Organizations, Preferred Provider Organizations, Provider-sponsored Organizations, as well as Private Fee-for-Service Plans and Medical Savings Accounts. While the new options bring more flexibility for health care decisions for people with Medicare, they also necessitate the need for a carefully planned, extensive education campaign to assure that Medicare beneficiaries have understanding of the new health plan choices offered by Medicare and how to use HCFA-developed information tools that will be available through an annual publication, a toll-free number and the World Wide Web.

The purpose of this submission is to request approval of a call-back survey of callers to the Medicare+Choice toll-free line. Through this survey, a sample of callers to the Medicare+Choice toll-free line will be called back to obtain information about whether they were satisfied with the interaction with the customer service representative, whether additional calls to other sources were necessary to get the information or resolve the problem that prompted the call, and whether they would call this number again in the future. We plan to tally the number and types of problems that are identified during these call backs to identify those problems that appear to be systematic. We will make any necessary changes in the operations of the phone centers as well as in the operator training to avoid such problems in the future.

HCFA is requesting OMB review and approval of this collection within 6 working days of publication of this notice in the **Federal Register**, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 5 working days of the publication of this notice. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New Collection.

Title of Information Collection: Call-Back Survey of Callers to the Medicare+Choice Toll-free Line.

Form Number: HCFA-R–253 (OMB approval #: 0938-NEW).

Use: The primary purpose of the call-back survey is to obtain information from callers about their satisfaction with the Medicare+Choice toll-free line. This information will be used to identify problems and make recommendations for ways of improving the service provided through the Medicare+Choice toll-free line.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,050.

Total Annual Responses: 1,050.

Total Annual Hours Requested: 175 hours.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designees referenced below within 5 working days of the publication of this notice in the **Federal Register**:

Health Care Financing Administration,
Office of Information Services,
Security and Standards Group,
Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: John Rudolph HCFA–R–253 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: August 20, 1998.

John Parmigiani,

Acting HCFA Reports Clearance Officer, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–22861 Filed 8–26–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September, 1998.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 9, 1998; 9:00 a.m.–5:00 p.m.; September 10, 1998; 9:00 a.m.—12:30 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, September 9, from 9:00 a.m. to 5:00 p.m. and on Thursday, September 10, from 9:00 a.m. to 12:30 p.m. Agenda items will include, but not be limited to: updates on National Vaccine Injury Compensation Program (VICP) legislative proposals, and discussions on the coverage of vaccines in clinical trials and options for expediting coverage of vaccines under the VICP.

Presentations will be made on the Hepatitis A Vaccine, Group B Strep disease, and the Intra-nasal Flu vaccine. In addition to routine Program reports, updates will also be given from the National Vaccine Program Office and the Department of Justice.

Public comment will be permitted before lunch and at the end of the Commission meeting on September 9, 1998, and before adjournment on September 10, 1998. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine

Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on September 9–10. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: August 20, 1998.

Jane M. Harrison,

Director, Division of Program Review and Coordination.

[FR Doc. 98–23034 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of OMB Approval for Reporting and Disclosure Requirements in the Final Rule With Comment Period for Organ Procurement and Transplantation Network

A Final Rule with Comment Period for the Organ Procurement and Transplantation Network was published in the **Federal Register** on April 2, 1998, under Part II (63 FR 16298). The purpose of this rule is to improve the effectiveness and equity of the Nation's transplantation system and to further the purposes of the National Organ Transplant Act of 1984, as amended.

The Rule contained information collection requirements which were subject to Office of Management and Budget (OMB) review. OMB approval of the collection of information provides the agency the authority to collect the information and to impose the estimated burden. This notice serves as an announcement to the public that the following information collection requirements for the Organ Procurement and Transplantation Network (42 CFR Part 121) have been approved:

121.3(c)(2) Membership and application requirements
121.6(c) (Reporting) Criteria for organ acceptance
121.6(c) (Disclosure) Sending criteria to OPOs
121.7(b)(4) Reasons for refusal
121.7(e) Transplant to prevent organ wastage
121.9(b) Designated Transplant Program Requirements.

The OMB control number for this information collection is 0915–0184. The approval expires on May 31, 2001.

For further information contact the Reports Clearance Officer, Susan G. Queen, Ph.D., Health Resources and Services Administration, Office of Planning, Evaluation and Legislation, 5600 Fishers Lane, Room 14–36, Rockville, Maryland 20857. Her telephone number is (301) 443–1129.

As stated in the Paperwork Reduction Act of 1995 and provided in 5 CFR 1320.11(k), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Dated: August 20, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–23033 Filed 8–26–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–32]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* September 28, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 19, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Notice of Funding Availability for a Local Lead Hazard Awareness Campaign.

Office: Lead Hazard Control.

OMB Approval Number: 2539–0013.

Description of the Need for the Information and Its Proposed Use: Grants will be awarded at the local level

to promote Education and Outreach in Lead Hazard Awareness.

Form Number: None.

Respondents: Not-For-Profit Institutions, Business or Other For-Profit and State, Local or Tribal Government.

Frequency of Submission: Quarterly.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application Development	10		1		50		500
Quarterly Recordkeeping	5		8		4		160

Total Estimated Burden Hours: 660.

Status: New.

Contact: Karen L. Williams, HUD, (202) 755–1785 x118; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–22950 Filed 8–26–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–33]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: September 28, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 20, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Notice of Funding Availability for a National Lead Hazard Awareness Campaign.

Office: Office of Lead Hazard Control.

OMB Approval Number: 2539–0014.

Description of the Need for the Information and Its Proposed Use: Grants will be Awarded at the National Level to promote Education and Outreach in Lead Hazard Awareness.

Form Number: None.

Respondents: Not-For-Profit Institutions, or Business or Other For-Profit.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per burden	
					Response	= Hours
Application Development	2		1		100	200
Quarterly Reports	2		8		4	32

Total Estimated Burden Hours: 232.

Status: New Collection.

Contact: Karen L. Williams, HUD, (202) 755–1785, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 20, 1998.

[FR Doc. 98–22960 Filed 8–26–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4172–FA–02]

Housing Counseling Program Funding Awards for Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Announcement of Housing Counseling Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding award decisions made by the Department in a competition for funding HUD-approved housing counseling agencies. The announcement contains the names and addresses of the agencies receiving grants and the amount of the grants.

FOR FURTHER INFORMATION CONTACT: Kitty Woodley, Director, Marketing and Outreach Division, Room 9166, Office of

Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0317. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service on 1–800–877–8339 or (202)708–9300. (With the exception of the ''800'' number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). HUD enters into agreement with qualified public or private nonprofit organizations to provide housing counseling services nationwide. The services include providing information, advice and assistance to renters, first-time homebuyers, homeowners, and senior citizens in areas such as pre-purchase counseling, financial management, property maintenance and other forms of housing assistance to improve the clients' housing conditions.

The purpose of the housing counseling grant is to provide funding to HUD approved housing counseling agencies to assist them in providing housing counseling services. Two types of HUD-approved agencies were eligible for FY 97 housing counseling grants: (1) National, regional or multi-state housing counseling organizations (known as intermediaries); and (2) local housing counseling agencies.

Local counseling agencies were given the option of applying directly to the local HUD office for FY 97 funding, or as a part of a network of affiliate counseling agencies of a national, regional or multi-state housing counseling organization which apply for funding to HUD Headquarters. HUD funding of approved housing counseling agencies is not guaranteed. When HUD funding is awarded, it is not to cover all expenses incurred by an agency to deliver housing counseling services. Agencies must seek additional funds from other sources. The availability of housing counseling program funding depends upon appropriations by Congress and is awarded competitively as announced herein.

The 1997 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on May 1, 1997 (62 FR 23916). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice. HUD awarded a total of $12.3 million of housing counseling funds to 350 local agencies and 5 national intermediaries.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names and addresses of HUD-approved agencies awarded funding under the FY 1997 Housing Counseling NOFA, and the amount of funds awarded to each agency. This information is provided in Appendix A to this document.

Dated: August 14, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing.

Appendix A—Housing Counseling Program Grantees for Fiscal Year 1997

Intermediary Organizations

ACORN HOUSING CORPORATION, 846 N. Broad Street, Philadelphia, PA 19130, Amount Awarded: $1,000,000

NEIGHBORHOOD REINVESTMENT CORPORATION, 1325 G Street, NW, Suite 800, Washington, DC 20005–3100, Amount Awarded: $990,000

NATIONAL ASSOCIATION OF HOUSING PARTNERSHIPS, 569 Columbus Avenue, Boston (Suffolk County), MA 02118, Amount Awarded: $1,000,100

CATHOLIC CHARITIES USA, 1731 King Street, Suite 200, Alexandria, VA 22314, Amount Awarded: $727,850

NATIONAL FOUNDATION FOR CONSUMER CREDIT, INC., 8611 2nd Avenue, Suite 100, Silver Spring, MD 20910, Amount Awarded: $1,000,000

Local Organizations

MERRIMACK VALLEY HOUSING PARTNERSHIP, INC., 10 Kirk Street, P.O. Box 1042, Lowell, MA 08153–1042, Amount Awarded: $15,000

HOMEOWNER OPTIONS FOR MASSACHUSETTS ELDERS, 30 Winter Street, 7th Floor, Boston, MA, 02108, Amount Awarded: $23,080

GREATER BOSTON LEGAL SERVICES, 107 Friend Street, Boston, MA 02114, Amount Awarded: $25,823

THE URBAN LEAGUE OF GREATER HARTFORD, 1229 Albany Avenue, Hartford, CT 06112, Amount Awarded: $20,739

CONSUMER CREDIT COUNSELING SERVICE OF CONNECTICUT, 111 Founders Plaza Suite 1400, East Hartford, CT 06108, Amount Awarded: $78,000

CONSUMER CREDIT COUNSELING SERVICES OF MAINE, INC., 160 Fox St., Portland, ME 04101, Amount Awarded: $11,458

COASTAL ENTERPRISES, INC., Water St., P.O. Box 268, Wiscasset, ME 04578, Amount Awarded: $11,100

BURLINGTON COMMUNITY LAND TRUST INC., P.O. Box 523, Burlington, VT 05402, Amount Awarded: $6,087

CHAMPLAIN VALLEY OFFICE OF ECONOMIC OPPORTUNITY, P.O. Box 1603, Burlington, VT 05402, Amount Awarded: $3,222

COASTAL ECONOMIC DEVELOPMENT CORPORATION, 39 Andrews Rd., Bath, ME 04530, Amount Awarded: $3,939

BLACKSTONE VALLEY COMMUNITY ACTION PROGRAM, INC., 32 Goff Ave., Pawtucket, RI 02860, Amount Awarded: $13,477

URBAN LEAGUE OF RHODE ISLAND, INC., 246 Prairie Avenue, Providence, RI 02905, Amount Awarded: $7,500

URBAN LEAGUE OF ONONDAGA COUNTY, INC., 324 University Avenue, Suite 310, Syracuse, NY 13210, Amount Awarded: $7,824

RURAL ULSTER PRESERVATION COMPANY, INC., 289 Fair Street, Kingston, NY 12401, Amount Awarded: $7,820

UNITED TENANTS OF ALBANY, INC., 33 Clinton Avenue, Albany, NY 12207, Amount Awarded: $8,000

RURAL SULLIVAN COUNTY HOUSING OPPORTUNITIES, INC., P.O. Box 1497, 375 Broadway, Monticello, NY 12701, Amount Awarded: $8,293

METRO-INTERFAITH SERVICES, INC., 21 New Street, Binghamton, NY 13903, Amount Awarded: $6,520

OPPORTUNITIES FOR CHENANGO, INC., P.O. Box 470, 44 West Main Street, Norwich, NY 13815–0470, Amount Awarded: $11,449

DELAWARE OPPORTUNITIES, INC., 47 Main Street, Delhi, NY 13753–1198, Amount Awarded: $3,242

BETTER NEIGHBORHOODS, INC., 986 Albany Street, Schenectady, NY 12307, Amount Awarded: $28,390

SYRACUSE UNITED NEIGHBORS, INC., 1540 S. Salina Street, Syracuse, NY 13205 Amount Awarded: $15,473

CATSKILL MOUNTAIN HOUSING DEVELOPMENT CORP., P.O. Box 473, 448 Main Street, Catskill, NY 12414, Amount Awarded: $4,250

CORTLAND HOUSING ASSISTANCE COUNCIL, INC., 4 Lincoln Avenue, Suite 203, Cortland, NY 13045–2004, Amount Awarded: $2,608

HOUSING ASSISTANCE CENTER OF NIAGARA FRONTIER, INC., 1233 Main Street Buffalo, NY 14209, Amount Awarded: $7,690

BISHOP SHEEN ECUMENICAL HOUSING FOUNDATION, INC., 935 East Avenue Rochester, NY 14607, Amount Awarded: $21,200

THE HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC., 111 East Avenue, Suite 200, Rochester, NY 14604, Amount Awarded: $50,000

CHAUTAUQUA OPPORTUNITIES, INC., 17 West Courtney St., Dunkirk, NY 14048, Amount Awarded: $30,000

MERCER COUNTY HISPANIC ASSOCIATION, 410–416 Hanover Street, PO Box 1331, Trenton, NJ 08607, Amount Awarded: $20,270

JERSEY COUNSELING & HOUSING DEVELOPMENT, INC., 1840 South Broadway, Camden, NJ 08104, Amount Awarded: $80,846

ATLANTIC HUMAN RESOURCES, INC., One South New York Avenue, Atlantic City, NJ 08401, Amount Awarded: $9,000

O.C.E.A.N., INC., 40 Washington Street, PO Box 1029, Toms River, NJ 08754, Amount Awarded: $4,011
TRI-COUNTY COMMUNITY ACTION AGENCY, INC., 143 W. Broad Street, Bridgeton, NJ 08302, Amount Awarded: $10,000
ISLES, INC., 10 Wood Street, Trenton, NJ 08618, Amount Awarded: $20,000
SENIOR CITIZENS UNITED COMMUNITY SERVICES, INC., 146 Black Horse Pike, Mt. Ephraim, NJ 08059–2035, Amount Awarded: $3,542
ASIAN AMERICANS FOR EQUALITY INC., 111 DIVISION STREET, NEW YORK, NY 10002, Amount Awarded: $43,411
LONG ISLAND HOUSING SERVICES INC, 1747 VETERANS MEMORIAL HIGHWAY, SUITE 42–A, ISLANDIA, NY 11722, Amount Awarded: $21,706
OPEN HOUSING CENTER INC., 594 BROADWAY, SUITE 608, NEW YORK, NY 10012, Amount Awarded: $43,168
JAMAICA HOUSING IMPROVEMENT INC, 161–10 JAMAICA AVENUE, SUITE 610, QUEENS, NY 11432, Amount Awarded: $22,574
CYPRESS HILLS LOCAL DEVELOPMENT CORP., 625 JAMAICA AVENUE, BROOKLYN, NY 11208, Amount Awarded: $21,605
MONMOUTH COUNTY BOARD OF CHOSEN FREEHOLDERS, PO Box 1255, Freehold, NJ 07728–1255, Amount Awarded: $3,725
CITIZEN ACTION OF NEW JERSEY, 400 Main Street, Hackensack, NJ 07601, Amount Awarded: $25,791
CATHOLIC CHARITIES, DIOCESE OF METUCHEN, 540–550 Rt. 22 East, Bridgewater, NJ 08807, Amount Awarded: $2,500
SOMERSET COUNTY COALITION ON AFFORDABLE HOUSING, 9 Easy Street, PO Box 149, Bound Brook, NJ 08805–0149, Amount Awarded: $27,570
HOUSING COALITION OF CENTRAL JERSEY, 78 New Street, New Brunswick, NJ 08901, Amount Awarded: $29,348
ANNE ARUNDEL COUNTY ECONOMIC OPPORTUNITY COMMUNITY, INC., 251 WEST STREET, ANNAPOLIS, MD 21404, Amount Awarded: $27,000
ST. AMBROSE HOUSING AID CENTER, 321 E. 25TH STREET, BALTIMORE, MD 21218, Amount Awarded: $48,000
INNER CITY COMMUNITY DEVELOPMENT CORP., 3030 W. NORTH AVENUE, BALTIMORE, MD 21216, Amount Awarded: $33,900
DRUID HEIGHTS COMMUNITY DEVELOPMENT CORP., 1821 MCCULLOH STREET, BALTIMORE, MD 21217, Amount Awarded: $15,855
SHORE UP!, P.O. BOX 430, SALISBURY, MD 21803–0430, Amount Awarded: $20,000
COMMUNITY ASSISTANCE NETWORK, INC., 7701 DUNMANWAY, BALTIMORE, MD 21222, Amount Awarded: $20,000
COUNTY COMMISSIONER OF CARROLL COUNTY, 10 DISTILLERY DRIVE, 1ST FL, SUITE 101, WESTMINSTER, MD 21157–5194, Amount Awarded: $5,400
ST. PIUS V HOUSING COMMITTEE, INC., 1017 EDMONDSON AVENUE, BALTIMORE, MD 21223, Amount Awarded: $15,000
TRI-CHURCHES HOUSING, INC., 815 SCOTT STREET, BALTIMORE, MD 21230, Amount Awarded: $20,000
CONSUMER CREDIT COUNSELING SER OF THE KANAWHA VALLEY INC., 8 Capitol Street, Suite 200, Charleston, WV 25301, Amount Awarded: $4,909
FAMILY SERVICE-UPPER OHIO VALLEY, 51 Eleventh Street, Wheeling, WV 26003, Amount Awarded: $4,908
NORTHWEST COUNSELING SERVICES, INC., 5001 NORTH BROAD STREET, PHILADELPHIA, PA 19141, Amount Awarded: $15,000
NUEVA ESPERANZA, 4261 NORTH 5TH STREET, PHILADELPHIA, PA 19140, Amount Awarded: $10,000
TABOR COMMUNITY SERVICES, INC., 439 EAST KING STREET, LANCASTER, PA 17602, Amount Awarded: $10,000
NEW KENSINGTON CDC, 2513–15 FRANKFORD AVENUE, PHILADELPHIA, PA 19125, Amount Awarded: $10,000
PHILADELPHIA COUNCIL FOR COMMUNITY ADVANCEMENT, 100 NORTH 17TH STREET, SUITE 700, PHILADELPHIA, PA 19103, Amount Awarded: $15,000
HOUSING COUNCIL OF YORK, 116 NORTH GEORGE STREET, YORK, PA 17401, Amount Awarded: $15,000
KEYSTONE LEGAL SERVICES, INC., 2054 EAST COLLEGE AVENUE, STATE COLLEGE, PA 16801, Amount Awarded: $8,000
BERKS COMMUNITY ACTION PROGRAM, 247 NORTH FIFTH STREET, READING, PA 19601, Amount Awarded: $15,000
HOUSING CONSORTIUM FOR DISABLED INDIVIDUALS, 4040 MARKET STREET, PHILADELPHIA, PA 19104, Amount Awarded: $10,000
COMMISSION ON ECONOMIC OPPORTUNITY, 165 AMBER LANE, WILKES-BARRE, PA 18702, Amount Awarded: $10,000
HISPANIC AMERICAN ORGANIZATION, 711 CHEW STREET, ALLENTOWN, PA 18102, Amount Awarded: $9,800
YWCA/CENTERS FOR HOMEOWNERSHIP, 233 KING STREET, WILMINGTON, DE 19801, Amount Awarded: $10,000
RESOURCES FOR HUMAN DEVELOPMENT, 4333 KELLY DRIVE, PHILADELPHIA, PA 19129, Amount Awarded: $10,000
HOUSING ASSOCIATION OF DELAWARE VALLEY, 658 NORTH WATTS STREET, PHILADELPHIA, PA 19123, Amount Awarded: $13,000
HARRISBURG FAIR HOUSING COUNCIL, 2100 NORTH 6TH STREET, HARRISBURG, PA 17110, Amount Awarded: $10,000
FIRST STATE COMMUNITY ACTION AGENCY, 308 NORTH RAILROAD AVENUE, GEORGETOWN, DE 19947, Amount Awarded: $15,000
NEIGHBORHOOD HOUSE, INC., 1218 B STREET, WILMINGTON, DE 19801, Amount Awarded: $15,000
THE TREHAB CENTER, 10 PUBLIC AVENUE, MONTROSE, PA 18801, Amount Awarded: $10,000
URBAN LEAGUE OF PHILADELPHIA, 251–253 SOUTH 24TH STREET, PHILADELPHIA, PA 19103, Amount Awarded: $10,000
C.C.C.S. OF LEHIGH VALLEY, 3671 CRESCENT COURT EAST, P.O. BOX A, WHITEHALL, PA 18052, Amount Awarded: $10,000
NCALL RESEARCH, INC, 20 EAST DIVISION STREET, P.O. BOX 1092, DOVER, DE 19903, Amount Awarded: $10,000
EOC OF SCHUYLKILL COUNTY, 225 NORTH CENTRE STREET, POTTSVILLE, PA 17901, Amount Awarded: $10,000
BAYFRONT NATO, INC., 312 Chestnut Street, Erie, PA 16507–1222, Amount Awarded: $2,000
BOOKER T. WASHINGTON CENTER, INC., 1720 Holland Street, Erie, PA 16503, Amount Awarded: $6,000
COMMUNITY ACTION SOUTHWEST, 315 East Hallam Avenue, Washington, PA 15301, Amount Awarded: $2,000
COMMUNITY/LENDER CREDIT PROGRAM, INC., Suite 1022, Park Bldg., 355 Fifth Avenue, Pittsburgh, PA 15222–2407, Amount Awarded: $10,000
HOUSING OPPORTUNITIES, INC., 133 Seventh Avenue, PO Box 9, McKeesport, PA 15134, Amount Awarded: $15,000
INDIANA COUNTY COMMUNITY ACTION PROGRAM, INC., 827 Water Street, PO Box 187, Indiana, PA 15701, Amount Awarded: $5,000
URBAN LEAGUE OF PITTSBURGH, INC., One Smithfield Street, Pittsburgh, PA 15222–2222, Amount Awarded: $23,139
HOUSING OPPORTUNITIES MADE EQUAL OF RICHMOND, 1218 West Cary Street, Richmond, VA 23220, Amount Awarded: $56,000
MONTICELLO AREA COMMUNITY ACTION AGENCY, 1025 Park Street, Charlottesville, VA 22901, Amount Awarded: $11,000
OFFICE OF HUMAN AFFAIRS, P. O. Box 37, 6060 Jefferson Avenue, 12–C, Newport News, VA 23605, Amount Awarded: $32,715
PEOPLE INCORPORATED OF SOUTHWEST VIRGINIA, 1173 West Main Street, Abingdon, VA 24210, Amount Awarded: $2,500
SKYLINE COMMUNITY ACTION PROGRAM, INC., P. O. Box 588, Madison, VA 22727, Amount Awarded: $10,000
THE SOUTHEASTERN TIDEWATER OPPORTUNITY PROJECT, INC., 2551 Almeda Avenue, Norfolk, VA 23513, Amount Awarded: $46,164
TOTAL ACTION AGAINST POVERTY, PO Box 2868, 145 Campbell Avenue, SW, Roanoke, VA 24001, Amount Awarded: $23,790
VIRGINIA EASTERN SHORE ECONOMIC EMPOWERMENT & HOUSING, P O Box 814, Nassawadox, VA 23413, Amount Awarded: $25,000
CONSUMER CREDIT COUNSELING SERVICE OF GREATER WASHINGTON, 15847 Crabbs Branch Way, Rockville, MD 20855, Amount Awarded: $41,000
NEAR NORTHEAST COMMUNITY IMPROVEMENT CORPORATION, 1326 Florida Avenue, NE, Washington, DC 20002, Amount Awarded: $23,280
RESTON INTERFAITH HOUSING CORPORATION, 11484 Washington Plaza West, Suite 100, Reston, VA 20190, Amount Awarded: $24,840

PRINCE WILLIAM COUNTY—COOPERATIVE EXTENSION, 8033 Ashton Avenue, suite 105, Manassas, VA 20109, Amount Awarded: $40,000
ARLINGTON HOUSING CORPORATION, 2300 South 9th Street, Suite 200, Arlington, VA 22204, Amount Awarded: $26,000
MARSHALL HEIGHTS COMMUNITY DEVELOPMENT ORGANIZATION, 3917 Minnesota Avenue, NE 2nd Floor, Washington, DC 20019, Amount Awarded: $20,000
HOUSING COUNSELING SERVICES, INC., 2430 Ontario Road N.W., Washington, DC 20009, Amount Awarded: $40,500
DEKALB HOUSING COUNSELING CENTER, INC., 4151 Memorial Drive, Suite 107–E, Decatur, GA 30032, Amount Awarded: $100,000
COBB HOUSING, INC., 700 Sandy Plains Road, Suite B–8, Marietta, GA 30066, Amount Awarded: $30,000
CONSUMER CREDIT COUNSELING SERVICE OF MIDDLE GEORGIA, 277 Martin Luther King West, Suite 202, Macon, GA 31201, Amount Awarded: $2,500
ECONOMIC OPPORTUNITY FOR SAVANNAH CHATHAM COUNTY AREA INC., 618 West Anderson Street, Savannah, GA 31401, Amount Awarded: $100,000
UNIFIED GOVERNMENT OF ATHENS-CLARK COUNTY, Human & Economic Development Department, 155 E. Washington Street, P. O. Box 1868, Athens, GA 30603, Amount Awarded: $24,000
FULTON-ATLANTA COMMUNITY ACTION AUTHORITY, INC., 75 Piedmont Avenue, NE, Suite 1200, Atlanta, GA 30303, Amount Awarded: $2,500
CONSUMER CREDIT COUNSELING SERVICE OF ATLANTA, 100 Edgewood Avenue, Suite 1500, Atlanta, GA 30303, Amount Awarded: $24,012
METRO COLUMBUS URBAN LEAGUE, 802 1st Avenue, Columbus, GA 31901, Amount Awarded: $2,500
CITY OF ALBANY, P.O. Box 447, Albany, GA 31702, Amount Awarded: $2,500
ALABAMA COUNSEL ON HUMAN RELATIONS, INC., P. O. Box 409, Auburn, AL 36831–0409, Amount Awarded: $2,949
COMMUNITY ACTION & COMMUNITY DEVELOPMENT AGENCY OF N. AL INC. , P. O. Box 1788, 107 Second Avenue, NE, Decatur, AL 35602, Amount Awarded: $20,982
CAA HUNTSVILLE/MADISON & LIMESTONE COUNTIES, INC., 3516 Stringfield Road, Huntsville, AL 35810, Amount Awarded: $14,818
HOUSING AUTHORITY OF THE BIRMINGHAM DISTRICT, 1826 3rd Avenue South, Birmingham, AL 35233, Amount Awarded: $17,599
MOBILE HOUSING BOARD, 151 South Claiborne Street, Mobile, AL 36633, Amount Awarded: $12,573
ORGANIZED COMMUNITY ACTION PROGRAMS, INC., P. O. Box 908, Troy, AL 36081, Amount Awarded: $3,846
THE HOUSING AUTHORITY OF THE CITY OF AUBURN, 931 Booker Street, Auburn, AL 36830, Amount Awarded: $1,446
CAA OF NORTHWEST ALABAMA, INC., 502 E. College Street, Florence, AL 35630–5797, Amount Awarded: $1,810
WIL-LOW NONPROVIT HOUSING CORP., INC., P. O. Box 383, 200A Commerce Street, Hayneville, AL 36040, Amount Awarded: $6,024
BIRMINGHAM URBAN LEAGUE, 1717 4th Avenue North, P. O. Box 11269, Birmingham, AL 35202–1269, Amount Awarded: $28,376
CONSUMER CREDIT COUNSELING OF SOUTH FLORIDA, INC., 11645 Biscayne Blvd., Suite 205, North Miami, FL 33181, Amount Awarded: $50,000
URBAN LEAGUE OF PALM BEACH COUNTY, INC., 1700 North Australian Avenue, West Palm Beach, FL 33407, Amount Awarded: $34,927
WEST PERRINE COMMUNITY DEVELOPMENT CORP., 17623 Homestead Avenue, Miami, FL 33157, Amount Awarded: $20,000
CONSUMER CREDIT COUNSELING SERVICE OF PBC & TREASURE COAST, 2330 South Congress Avenue, Suite 1A, West Palm Beach, FL 33406, Amount Awarded: $56,000
CAROLINA REGIONAL LEGAL SERVICES, Post Office Box 479, 279 West Evans Street, Florence, SC 29503–0479, Amount Awarded: $14,000
GREENVILLE URBAN LEAGUE, INC., 15 Regency Hill Drive, Greenville, SC 29607, Amount Awarded: $34,175
PALMETTO LEGAL SERVICES, 2109 Bull Street, Post Office Box 2267, Columbia, SC 29202, Amount Awarded: $15,000
TRIDENT UNITED WAY, 32 Ann Street, Post Office Box 20696, Charleston, SC 29413–0696, Amount Awarded: $20,000
DAVIDSON COUNTY COMMUNITY ACTION, INC., P.O. Box 389, 25 East First Street, Suite 1, Lexington, NC 27293–0389, Amount Awarded: $4,662
WILSON COMMUNITY IMPROVEMENT ASSOCIATION, INC., 504 E. Green Street (mailing address), 1817 Butterfield Lane, Wilson, NC 27893, Amount Awarded: $15,653
GUILFORD COUNTY COMMUNITY ACTION PROGRAM, INC., P.O. Box 21961, 201 South Elm Street, Greensboro, NC 27420, Amount Awarded: $5,476
JOHNSTON-LEE COMMUNITY ACTION, INC., P.O. Drawer 711, 1102 Massey Street, Smithfield, NC 27577, Amount Awarded: $14,335
NORTHWESTERN REGIONAL HOUSING AUTHORITY, P.O. Box 2510, 869 Highway 105 Extension, Boone, NC 28607, Amount Awarded: $39,374
MID-EAST COMMISSION, P.O. Box 1787, 1 Harding Square, Washington, NC 27889, Amount Awarded: $5,869
SANDHILLS COMMUNITY ACTION PROGRAM, INC., P.O. Box 937, 103 Saunders Street, Carthage, NC 28327, Amount Awarded: $34,028
CUMBERLAND COMMUNITY ACTION PROGRAM, INC., P.O. Box 2009, 328 Gillespie Street, Fayetteville, NC 28302, Amount Awarded: $36,368
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES, 750 North State Street, Jackson, MS 39202, Amount Awarded: $5,000
GULF COAST COMMUNITY ACTION AGENCY, INC., 500 24th Street, P.O. Box 519, Gulfport, MS 39502–0519, Amount Awarded: $40,000
SACRED HEART SOUTHERN MISSIONS HOUSING CORPORATION, 6144 Highway 61 North, P.O. Box 365, Walls, MS 38680, Amount Awarded: $35,000
FAMILY COUNSELING SERVICES, INC., 1639 Atlantic Blvd., Jacksonville, FL 32207, Amount Awarded: $13,000
JACKSONVILLE URBAN LEAGUE, 233 West Duval Street, Jacksonville, FL 32202, Amount Awarded: $21,500
TALLAHASSEE URBAN LEAGUE, 923 Old Bainbridge Road Tallahassee, FL 32303, Amount Awarded: $20,000
CITY OF GAINESVILLE, PO Box 490, Station 0–B, Gainesville, FL 32602–0490, Amount Awarded: $26,785
NORTHERN KENTUCKY COMMUNITY CENTER, 824 Greenup Street, P.O. Box 2030, Covington, KY 41011, Amount Awarded: $18,910
TENANT SERVICES & HOUSING COUNSELING, INC., 136 N. Martin Luther King Blvd., Lexington, KY 40507, Amount Awarded: $18,910
LOUISVILLE URBAN LEAGUE, 1535 West Broadway, Louisville, KY 40203, Amount Awarded: $26,000
KNOX HOUSING PARTNERSHIP, INC., 220 Carrick Street, Suite 124, Knoxville, TN 37921, Amount Awarded: $5,000
CITY OF CHATTANOOGA HUMAN SERVICES DEPARTMENT, 501 W. 12th Street, Chattanooga, TN 37402, Amount Awarded: $4,000
OAK RIDGE HOUSING DEVELOPMENT CORPORATION, 901 Oak Ridge Turnpike, Suite 31, Oak Ridge, TN 37831, Amount Awarded: $3,500
KNOXVILLE LEGAL AID SOCIETY, INC., 502 S. Gay Street, Suite 404, Knoxville, TN 37902, Amount Awarded: $3,500
FAMILY & CHILDREN'S SERVICES OF CHATTANOOGA, INC., 300 East 8th Street, Chattanooga, TN 37403, Amount Awarded: $2,500
KNOXVILLE AREA URBAN LEAGUE, INC., 1514 East Fifth Avenue, Knoxville, TN 37917, Amount Awarded: $16,000
CONSUMER CREDIT COUNSELING OF EAST TENNESSEE, INC., 1012 Heiskell Avenue, Knoxville, TN 37927–3924, Amount Awarded: $4,500
DOUGLAS-CHEROKEE ECONOMIC AUTHORITY, 534 East First North Street, Morristown, TN 37816–1218, Amount Awarded: $2,536
UPPER EAST TENNESSEE HUMAN DEVELOPMENT AGENCY, 301 Louis Street, Kingsport, TN 37662, Amount Awarded: $2,535
URBAN LEAGUE OF GREATER CHATTANOOGA, INC., 730 Martin Luther King Boulevard, Chattanooga, TN 37401, Amount Awarded: $6,000
MEMPHIS HOUSING RESOURCE CENTER, 61 Adams, Memphis, TN 38103, Amount Awarded: $17,500
HOUSING OPPORTUNITIES CORPORATION, 147 Jefferson Avenue, Suite 800, Memphis, TN 38103, Amount Awarded: $55,000
MEMPHIS AREA LEGAL SERVICES, INCORPORATED, 109 North Main Street,

Suite 200, Memphis, TN 38103–5013, Amount Awarded: $18,000
WEST TENNESSEE LEGAL SERVICES, INCORPORATED, 210 West Main Street, Jackson, TN 38302–2066, Amount Awarded: $60,000.
VOLLINTINE EVERGREEN COMMUNITY DEVELOPMENT CORPORATION, 1680 Jackson Avenue, Memphis, TN 38107, Amount Awarded: $15,437.
CITIZENS FOR AFFORDABLE HOUSING, 1719 West End Ave., Suite 607W, Nashville, TN 37203, Amount Awarded: $4,000.
CONSUMER CREDIT COUNSELING SERVICE OF MIDDLE TN, INC., P. O. Box 160328, 3931 Gallatin Road, Nashville, TN 37216–0328, Amount Awarded: $8,000.
HOPE, INCORPORATED, 1501 Herman Street, Suite S, Nashville, TN 37208, Amount Awarded: $20,000.
METROPOLITAN DEVELOPMENT & HOUSING AGENCY, 701 South sixth Street Nashville, TN 37206–3893, Amount Awarded: $20,000.
NASHVILLE URBAN LEAGUE, INC. 1219 Ninth Avenue North, Nashville, TN 37208, Amount Awarded: $23,842.
CONSUMER CREDIT COUNSELING SERVICE OF CENTRAL FLORIDA, INC., 3970 Maguire Blvd., Suite 103, Orlando, FL 32803, Amount Awarded: $80,000.
FAMILY COUNSELING CENTER OF BREVARD, 220 Coral Sands Drive, Rockledge, FL 32955, Amount Awarded: $21,000.
HOUSING & NEIGHBORHOOD DEVELOPMENT SERVICES OF CENTRAL FL, 2211 East Hillcrest Street, Orlando, FL 32803, Amount Awarded: $17,000.
HOMES IN PARTNERSHIP, INC., 235 E. Fifth Street, P. O. Box 761, Apopka, FL 32704–0761, Amount Awarded: $10,180.
CEIBA HOUSING & ECONOMIC DEVELOPMENT CORP., Ave. Lauro Pinero #252, P.O. Box 203, Ceiba, PR 00735, Amount Awarded: $60,000.
CONSUMER CREDIT COUNSELING SERVICE OF P.R., Cobian Plaza Bldg, 1603 Ponce de Leon Ave Suite GM–03, Santurce, PR 00909, Amount Awarded: $91,856.
CONSUMER CREDIT COUNSELING SERVICE OF THE FLORIDA GULF COAST, 5201 W. Kennedy Blvd., Suite 110, Tampa, FL 33609, Amount Awarded: $45,000.
MANATEE OPPORTUNITY COUNCIL, INC., 347 6th Avenue West, Bradenton, FL 34205–8820, Amount Awarded: $40,000.
THE AGRICULTURAL & LABOR PROGRAM, INC., P.O. Box 3126, Winter Haven, FL 33885, Amount Awarded: $15,000.
COMMUNITY SERVICE COUNCIL OF NORTHERN WILL COUNTY, 719 Parkwood Avenue, Romeoville, IL 60446, Amount Awarded: $84,463.
DUPAGE HOMEOWNERSHIP CENTER, INC., 1333 North Main Street, Wheaton, IL 60187, Amount Awarded: $20,000.
CHICAGO URBAN LEAGUE DEVELOPMENT CORPORATION, 4510 South Michigan Avenue, Chicago, IL 60653, Amount Awarded: $70,000.
CEFS ECONOMIC OPPORTUNITY CORP., 1805 South Banker Street, Post Office Box 928, Effingham, IL 62401, Amount Awarded: $10,000.
COMMUNITY & ECONOMIC DEVELOPMENT ASSOCIATION OF COOK CTY, 224 North DesPlaines Street, Chicago, IL 60661, Amount Awarded: $84,463.
CONSUMER CREDIT COUNSELING SERVICE OF GREATER CHICAGO, 150 West Wacker Drive, #1400, Chicago, IL 60606, Amount Awarded: $25,000.
SPANISH COALITION FOR HOUSING, 4035 West North Avenue Chicago, IL 60639, Amount Awarded: $84,463
BETTER HOUSING LEAGUE OF GREATER CINCINNATI, INC., 2400 Reading RD., CINCINNATI, OH 45202, Amount Awarded: $50,000
CONSUMER CREDIT COUNSELING SERVICE, P.O. BOX DOROTHY LANE, DAYTON, OH 45429, Amount Awarded: $18,673
HOUSING DIRECTIONS OF GREATER TOLEDO, 1326 Collingwood Blvd. at Dorr, Toledo, OH 43602, Amount Awarded: $10,222.
NEAR WEST SIDE MULTI-SERVICE CORP., 4115 Bridge Avenue, Cleveland, OH 44113, Amount Awarded: $9,700.
YOUNGSTOWN AREA URBAN LEAGUE, 1350 Fifth Avenue, Suite 300, Youngstown, OH 44504, Amount Awarded: $2,500.
LUTHERAN HOUSING CORPORATION, 13944 Euclid Avenue, Suite 208, East Cleveland, OH 44112, Amount Awarded: $94,747.
COMMUNITY ACTION COMMISSION OF FAYETTE COUNTY, INC., 324 East Court Street, Washington Court House, OH 43160, Amount Awarded: $12,610.
MARION-CRAWFORD COMMUNITY ACTION COMMISSION, 240 E. Church Street, Marion, OH 43301–0779, Amount Awarded: $2,703.
CONSUMER CREDIT COUNSELING SERVICE OF MUSKINGUM VALLEY, 531 Market Street, Zansville, OH 43701–3601, Amount Awarded: $12,610.
COLUMBUS HOUSING PARTNERSHIP, 562 E. Main, Columbus, OH 43215, Amount Awarded: $12,610.
COMMUNITY ACTION COMMISION OF BELMONT COUNTY, 410 Fox-Shannon Place, St. Clairsville, OH 43950, Amount Awarded: $12,610
MID-OHIO REGIONAL PLANNING COMMISSION, 285 East Main St., Columbus, OH 43215–5272, Amount Awarded: $12,610
CONSOC HOUSING COUSELING, INC., 1889 East Livingston Ave., P. O. Box 15247, Columbus, Oh 43215, Columbus, OH 43209, Amount Awarded: $12,610
U-SNAP BAC, 11101 Morang, Detroit, MI 48224, Amount Awarded: $13,500
D. T. & ASSOCIATES, 33625 State Street, Farmington, MI 48335, Amount Awarded: $33,771
DETROIT NON-PROFIT HOUSING CORPORATION, 1200 6th Street, Suite 404, Detroit, MI 48226, Amount Awarded: $50,000
OAKLAND COUNTY MICHIGAN, 1200 N. Telegraph Road, Pontiac, MI 48341, Amount Awarded: $40,000
MICHIGAN HOUSING COUNSELORS, INC., 237 S.B. Gratiot, Mount Clemens, MI 48043, Amount Awarded: $24,000
HOUSING RESOURCE CENTER, 300 N. Washington Sq., Suite 103, Lansing, MI 48933, Amount Awarded: $28,000
EIGHTCAP, INC, 904 Oak Dr-Turk Lake, PO Box 368, Greenville, MI 48838, Amount Awarded: $13,250
LEGAL SERVICES OF NORTHERN MICHIGAN, 446 E. Mitchell Street, Petoskey, MI 49770, Amount Awarded: $20,000
HOUSING AUTHORITY OF THE CITY OF FORT WAYNE, P.O. Box 13489, 2013 South Anthony Boulevard, Fort Wayne, IN 46869–3489, Amount Awarded: $19,000
LINCOLN HILLS DEVELOPMENT CORPORATION, 302 Main Street, P.O. Box 336, Tell City, IN 47586, Amount Awarded: $7,000
REAL SERVICES, INC., 1151 South Michigan Street, P.O. Box 1853, South Bend, IN 46634, Amount Awarded: $4,100
HOOSIER UPLANDS ECONOMIC DEVELOPMENT CORPORATION, 521 West Main Street, Mitchell, IN 47446, Amount Awarded: $9,000
HOPE OF EVANSVILLE, INC., 116 Washington Av, Evansville, IN 47713, Amount Awarded: $22,000
CITY OF BLOOMINGTON, P.O. Box 100, 401 N. Morton St., Bloomington, IN 47402, Amount Awarded: $6,165
HOUSING ASSISTANCE OFFICE, INC., P.O. Box 1558, 1138 Lincolnway East, South Bend, IN 46634, Amount Awarded: $10,000
LAKE COUNTY 2293 N. Main St, Crown Point, IN 46307, Amount Awarded: $7,200
TRANSITION RESOURCES CORPORATION, 2511 East 46th St., Suite O–2, Indianapolis, IN 46205–2542, Amount Awarded: $5,000
URBAN LEAGUE OF NORTHWEST INDIANA, 3101 Broadway, Gary, IN 46409, Amount Awarded: $18,000
MUNCIE HOMEOWNERSHIP & DEVELOPMENT CENTER, 628 S. Walnut, P.O. Box 93, Muncie, IN 47308, Amount Awarded: $18,050
COMMUNITY ACTION OF GREATER INDIANAPOLIS, 2445 N. Meridian St., Indianapolis, IN 46208, Amount Awarded: $3,000
ANDERSON HOUSING AUTHORITY, 528 West 11th Street, Anderson, IN 46016, Amount Awarded: $17,000
HAMMOND HOUSING AUTHORITY, 7329 Columbia Circle West, Hammond, IN 46324, Amount Awarded: $16,000
COMMUNITY ACTION, INC. OF ROCK AND WALWORTH COUNTIES, 2300 Kellogg, Janesville, WI 53546, Amount Awarded: $7,000
MILWAUKEE UNITED FOR BETTER HOUSING, INC., 4011 West Capitol Drive, Milwaukee, WI 53216, Amount Awarded: $2,760
WALKER'S POINT DEVELOPMENT CORPORATION, 914 South Fifth Street, Milwaukee, WI 53204, Amount Awarded: $15,000
ESHAC, INC., 531 East Burleigh Street, Milwaukee, WI 53212, Amount Awarded: $10,000
URBAN LEAGUE OF FLINT, 5005 Cloverlawn, Flint, MI 48504, Amount Awarded: $18,504

HUMAN DEVELOPMENT COMMISSION, 429 Montague Avenue, Caro, MI 48723, Amount Awarded: $7,500
SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, 700 Minnesota Building, 46 E 4th St, St Paul, MN 55101, Amount Awarded: $15,000
COMMUNITY ACTION FOR SUBURBAN HENNEPIN, 33 10th Ave S, Suite 150, Hopkins, MN 55343, Amount Awarded: $44,370
T.A.C.T.I.C.S., INC., 315 Penn Ave N, Minneapolis, MN 55411, Amount Awarded: $10,000
TRI-COUNTY ACTION PROGRAMS, INC., 700 W St. Germain St, St Cloud, MN 56301, Amount Awarded: $41,707
CARVER COUNTY HOUSING & REDEVELOPMENT AUTHORITY, 500 Pine St, Suite 300, Chaska, MN 55318, Amount Awarded: $29,976
SENIOR HOUSING, INC., 2021 East Hennepin Avenue, Suite 130, Minneapolis, MN 55418, Amount Awarded: $10,510
CONSUMER CREDIT COUNSELING SERVICES SOUTHWEST, 2727 SAN PEDRO, NE, SUITE #117, ALBUQUERQUE, NM, 87110, Amount Awarded: $34,603
CONSUMER CREDIT COUNSELING SERVICE OF NORTH CENTRAL TEXAS, 1600 Redbud Blvd., Suite #300, McKinney, TX 75069, Amount Awarded: $70,000
CONSUMER CREDIT COUNSELING SERVICE OF GREATER DALLAS, 8737 King George Drive, Suite 200, Dallas, TX 75235, Amount Awarded: $100,000
DALLAS COUNTY COMMUNITY ACTION COMMITTEE, INC., 2121 Main Street, Suite 100, LB–19, Dallas, TX 75201, Amount Awarded: $40,000
HOUSING OPPORTUNITIES OF FORT WORTH, 1305 West Magnolia, Suite E, Fort Worth, TX 76104, Amount Awarded: $32,000
CONSUMER CREDIT COUNSELING SERVICE OF GREATER FORT WORTH, 1320 S. University Drive, Suite 200, Fort Worth, TX 76107, Amount Awarded: $33,116
GULF COAST COMMUNITY SERVICES ASSOCIATION, 6300 BOWLING GREEN, HARRIS COUNTY, HOUSTON, TX 77021, Amount Awarded: $35,000
HOUSTON AREA URBAN LEAGUE, 1300 MAIN, SUITE 1600, HARRIS COUNTY HOUSTON, TX 77002, Amount Awarded: $25,000
HOUSING OPPORTUNITIES OF HOUSTON, INC., 2900 WOODRIDGE, SUITE 300, HARRIS COUNTY, HOUSTON, TX 77087, Amount Awarded: $39,000
INTERNATIONAL COALITION OF FARMERS, 2600 SOUTH LOOP WEST, SUITE 620, HARRIS COUNTY, HOUSTON, TX 77054, Amount Awarded: $33,000
CROWLEY'S RIDGE DEVELOPMENT COUNCIL, INC., P. O. Box 1497, 249 S. Main, Jonesboro, AR 72403, Amount Awarded: $15,000
UNIVERSAL HOUSING DEVELOPMENT CORPORATION, P. O. Box 846, 301 East Third Street, Russellville, AR 72801, Amount Awarded: $11,400
CRAWFORD-SEBASTIAN COMMUNITY DEVELOPMENT COUNCIL, INC., 4831 Armour, P. O. Box 4069, Fort Smith, AR 72914, Amount Awarded: $15,000
EAST ARKANSAS LEGAL SERVICES, P. O. Box 1149, 500 E. Broadway, West Memphis, AR 72303, Amount Awarded: $18,000
FAMILY SERVICE AGENCY, 628 West Broadway, Suite 300, P. O. Box 5431, North Little Rock, AR 72119, Amount Awarded: $15,000
IN AFFORDABLE HOUSING, INC., 801 John Barrow, Suite 18, Little Rock, AR 72205, Amount Awarded: $11,400
YOUNG WOMEN'S CHRISTIAN ASSOCIATION EL PASO DEL NORTE REGION, 1918 Texas Ave, El Paso, TX 79901, Amount Awarded: $37,960
GUADALUPE ECONOMIC SERVICS CORPORATION, 1416 First Street, Lubbock, TX 79401, Amount Awarded: $27,546
WOMEN ENTREPRENEURS, INCORPORATED, 1683 North Claiborne Avenue, New Orleans, LA 70116, Amount Awarded: $4,000
ST. MARY COMMUNITY ACTION COMMITTEE ASSOCIATION, INCORPORATN, P.O. Box 271, St. Mary Parish, Franklin, LA 70538, Amount Awarded: $2,500
PARISH OF JEFFERSON, 1221 Elmwood Park Blvd., Harahan, LA 70123, Amount Awarded: $6,125
DESIRE COMMUNITY HOUSING CORPORATION, 3251 St. Ferdinand Street, New Orleans, LA 70126, Amount Awarded: $5,000
ST. MARTIN, IBERIA, LAFAYETTE COMMUNITY AGENCY, INCORPORATED, 501 St. John Street, P.O. Box 3343, Lafayette, LA 70502, Amount Awarded: $15,000
LAFAYETTE CONSOLIDATED GOVERNMENT, P.O. Box 4017–C , Lafayette, LA 70502–4017, Amount Awarded: $16,000
ST. JAMES PARISH PRESIDENT'S OFFICE, P.O. Box 87, Convent, LA 70723, Amount Awarded: $2,500
ASSIT AGENCY, P.O. Box 1404, Crowley, LA 70527–1404, Amount Awarded: $14,000
CENTRAL CITY HOUSING DEVELOPMENT CORPORATION, 2020 Jackson Avenue, New Orleans, LA 70113, Amount Awarded: $18,000
CONSUMER CREDIT COUNSELING SERVICE, 3200 N. Rockwell Avenue, Bethany, OK 73008, Amount Awarded: $20,000
HOUSING AUTHORITY OF CITY OF NORMAN, 700 N. Berry Road, Norman, OK 73069, Amount Awarded: $15,000
COMMUNITY ACTION AGENCY OF OKLAHOMA CITY AND OK/CN COUNTIES, 1900 NW 10th Street, Oklahoma City, OK 73106, Amount Awarded: $25,000
HOUSING AUTHORITY OF THE CHICKASAW NATION, P.O. Box 668, Ada, OK 74820, Amount Awarded: $3,000
CONSUMER CREDIT COUNSELING SERVICE OF GREATER SAN ANTONIO, 6851 Citizens Parkway, Suite 100, San Antonio, TX 78229, Amount Awarded: $75,000
CHILD & FAMILY SERVICE (CONSUMER CREDIT COUNSELING DIV.), 1221 W. Ben White Boulevard, Suite 108A, Austin, TX 78704, Amount Awarded: $17,532
CITY OF SAN ANTONIO DEPT. OF COMMUNITY INITIATIVES, 115 Plaza de Armas, Suite 230, San Antonio, TX 78205, Amount Awarded: $17,532
COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, 1150 E. Adams—Second Floor, Brownsville, TX 78520, Amount Awarded: $30,000
MARSHALL HOUSING AUTHORITY, P.O. Box 609, 1401 Poplar, Marshall, TX 75671 Amount Awarded: $12,704
OUACHITA MULTI-PURPOSE COMMUNITY ACTION PROGRAM, INC., 315 Plum Street, P. O. Box 3086, Monroe, LA 71210–3086, Amount Awarded: $10,000
CENLA COMMUNITY ACTION COMMITEE, INC., 230 Bolton Avenue, Alexandria, LA 71301–7126, Amount Awarded: $9,000
CREDIT COUNSELING CENTERS OF OKLAHOMA, INC, 4646 South Harvard, P.O. Box 4450, Tulsa, OK 74159–0450, Amount Awarded: $29,608
DEEP FORK COMMUNITY ACTION FOUNDATION, INC, 313 West 8th Street, P.O. Box 670, Okmulgee, OK 74447, Amount Awarded: $2,500
PROJECT GET TOGETHER, 2020 South Maplewood, Tulsa, OK 74112, Amount Awarded: $10,000
HAWKEYE AREA COMMUNITY ACTION PROGRAM, INC., PO Box 789, Cedar Rapids, IA 52406–0789, Amount Awarded: $9,800
CITY OF DES MOINES, DEPT. OF COMMUNITY DEVELOPMENT, 602 East First Street, Des Moines, IA 50309–1881, Amount Awarded: $7,500
NEIGHBORHOOD PLACE FAMILY SUPPORT CENTER, 1128 West 6th Street, Davenport, IA 52802, Amount Awarded: $7,200
MUSCATINE'S CENTER FOR STRATEGIC ACTION, 312 Iowa Avenue, Muscatine, IA 52761, Amount Awarded: $3,750
CONSUMER CREDIT COUNSELING SERVICE INC., 1201 West Walnut, Salina, KS 67401, Amount Awarded: $12,000
HOUSING INFORMATION CENTER, 3810 Paseo, Kansas City, MO 64109–2721, Amount Awarded: $4,000
HOUSING AND CREDIT COUNSELING, INC., 1195 SW Buchanan, Suite 203, Topeka, KS 66604–1183, Amount Awarded: $23,000
MENNONITE HOUSING REHABILITATION SERVICE, 3033 W. 2nd Street, Wichita, KS 67203–, Amount Awarded: $15,000
NORTHEAST KANSAS COMMUNITY ACTION PROGRAM (NEK–CAP), P.O. Box, R.R. #4, Hiawatha, KS 66434, Amount Awarded: $25,365
URBAN LEAGUE OF WICHITA, INC., 1802 East 13th Street N., Wichita, KS 67214, Amount Awarded: $16,000
CENTRAL MISSOURI COMMUNITY ACTION AGENCY, P.O. Box 125, 106 W. 4th, Appleton City, MO 64724, Amount Awarded: $20,000
FAMILY HOUSING ADVISORY SERVICES, INC., 2416 Lake Street, Omaha, NE 68111, Amount Awarded: $37,000
LINCOLN ACTION PROGRAM, INC., 2202 South 11 Street, Lincoln, NE 68502, Amount Awarded: $7,989
NORTH AREA COMMUNITY FORUM, 10371 West Florissant, P.O. Box 35007, St.

Louis, MO 63135, Amount Awarded: $21,000
HOUSING OPTIONS PROVIDED FOR THE ELDERLY, INC., 4265 Shaw, St. Louis, MO 63110, Amount Awarded: $5,000
LEGAL SERVICES OF EASTERN MISSOURI, INC., 4232 Forest Park Boulevard, St. Louis, MO 63018, Amount Awarded: $20,000
URBAN LEAGUE OF METROPOLITAN ST. LOUIS, 3701 Grandel Square, P.O. Box 8138, St. Louis, MO 63156–8138, Amount Awarded: $24,000
NORTHSIDE RESIDENTIAL HOUSING CORPORATION, 5647 Delmar Boulevard, St. Louis, MO 63112, Amount Awarded: $19,834
SOUTHWEST COMMUNITY RESOURCES, 295 Girard Street, Durango, CO 81301, Amount Awarded: $6,469
ADAMS COUNTY HOUSING AUTHORITY, 7190 Colorado Blvd, Commerce City, CO 80022, Amount Awarded: $45,279
CCCS OF N COLORADO AND SE WYOMING, INC., 126 West Harvard, Suite 5, Fort Collins, CO 80525–2142, Amount Awarded: $8,625
BLACK HILLS LEGAL SERVICES, INC., 1301 Mt. Rushmore Road, P.O. Box 1500, Rapid City, SD 57709–1500, Amount Awarded: $8,625
CCCS OF LUTHERAN SOCIAL SERVICES, 705 East 41st Street, Suite 100, Sioux Falls, SD 57105, Amount Awarded: $12,937
CATHOLIC SOCIAL SERVICE, INC., 302 Jefferson Street, Pueblo, CO 81004–2318, Amount Awarded: $19,405
COMMUNITY ACTION PROGRAM, REGION VII, INC., 2105 Lee Avenue, Bismarck, ND 58504–6798, Amount Awarded: $12,936
SOUTHEASTERN NORTH DAKOTA COMMUNITY ACTION AGENCY, 3233 South University Drive, P.O. Box 2683, Fargo, ND 58104, Amount Awarded: $2,156
CCCS OF THE BLACK HILLS, INC., 621 6th Street, Suite 201, P.O. Box 817, Rapid City, SD 57709, Amount Awarded: $23,718
COMMUNITY ACTION & DEVELOPMENT PROGRAM INC., 202 East Villard, Dickson, ND 58601, Amount Awarded: $2,156
BROTHERS REDEVELOPMENT, INC., 2250 Eaton Street, Garden Level—Suite B, Denver, CO 80214, Amount Awarded: $12,937
BOULDER COUNTY HOUSING AUTHORITY, P.O. Box 471, Boulder, CO 80306, Amount Awarded: $17,249
NORTHEAST DENVER HOUSING CENTER, 1735 Gaylord Street, Denver, CO 80206, Amount Awarded: $23,717
NEIGHBOR TO NEIGHBOR, INC., 424 Pine Street, Suite 203, Fort Collins, CO 80524, Amount Awarded: $17,249
COMMUNITY ACTION OPPORTUNITIES, INC., 420 3rd St, SW, Minot, ND 58701–4304, Amount Awarded: $2,156
DISTRICT 7 HUMAN RESOURCES DEVELOPMENT COUNCIL, P.O. Box 2016, Billings, MT 59103–0000, Amount Awarded: $7,991
WOMEN'S OPPORTUNITY & RESOURCE DEVELOPMENT, INC., 127 No. Higgins, Missoula, MT 59802–0000, Amount Awarded: $10,000
NORTHWEST MONTANA HUMAN RESOURCES, INC., P.O. Box 8300, Kalispell, MT 59904–1300, Amount Awarded: $4,000
YOUR COMMUNITY CONNECTION, 2261 Adams Ave., Ogden, UT 84401, Amount Awarded: $14,642
FAMILY LIFE CENTER/UTAH STATE UNIVERSITY, 493 North 700 East, Logan, UT 84321, Amount Awarded: $20,705
COMMUNITY ACTION SERVICES, 257 E. Center Street, Provo, UT 84606, Amount Awarded: $14,456
SALT LAKE COMMUNITY ACTION PROGRAM, 764 S. 200 West, Salt Lake City, UT 84101, Amount Awarded: $43,461
CONSUMER CREDIT COUNSELING SERVICE OF KERN & TULARE COUNTIES, 5300 Lennox Avenue, Suite 200, Bakersfield, CA 93309–1662, Amount Awarded: $54,000
STANISLAUS COUNTY AFFORDABLE HOUSING CORPORATION (STANCO), 1214 11th Street, Suite 2, Modesto, CA 95354–0000, Amount Awarded: $40,259
HALE MAHAOLU, 200 Hina Avenue, Kahului, HI 96732, Amount Awarded: $2,500
LEGAL AID SOCIETY OF HAWAII, 108 Nuuanu Avenue, Honolulu, HI 96817–5119, Amount Awarded: $12,423
CONSUMER CREDIT COUNSELING OF LOS ANGELES, 600 Citadel Drive, Suite 490, Los Angeles, CA 90040, Amount Awarded: $100,000
CONSUMER CREDIT COUNSELING SERVICE OF VENTURA, 290 Maple Court Suite #118, Ventura, CA 93003, Amount Awarded: $75,000
HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, 815 W. Ocean Avenue, Lompoc, CA 93438–0397, Amount Awarded: $25,000
NEIGHBORHOOD SERVICES DEPT–CITY OF PHOENIX, 200 WEST WASHINGTON STREET 4TH FLOOR, PHOENIX, AZ 85003, Amount Awarded: $48,000
COMMUNITY HOUSING RESOURCES OF ARIZONA, 500 EAST THOMAS ROAD, SUITE 300, PHOENIX, AZ 85012, Amount Awarded: $30,000
CONSUMER CREDIT COUNSELING SERVICES SOUTHWEST, 2535 WEST CAMELBACK ROAD, PHOENIX, AZ 85017, Amount Awarded: $80,000
CHICANOS POR LA CAUSA, INC, 1112 EAST BUCKEYE ROAD, PHOENIX, AZ 85034, Amount Awarded: $24,220
NORTHERN VALLEY CATHOLIC SOCIAL SERVICES, 1020 Market Street, Redding, CA 96001, Amount Awarded: $11,000
CONSUMER CREDIT COUNSELING SERVICE OF SACRAMENTO, 11130 Sun Center Drive, Suite E., Rancho Cordova, CA 95670, Amount Awarded: $49,000
CONSUMER CREDIT COUNSELING SERVICE OF MID-COUNTIES, 1776 W. March Lane, #420, Stockton, CA 95207, Amount Awarded: $41,000
COMMUNITY HOUSING IMPROVEMENT PROGRAM, INC., 1560 Humboldt, Suite 2, Chico, CA 95928, Amount Awarded: $10,421
NEIGHBORHOOD HOUSE ASSOCIATION, 3043 FOURTH AVE., SAN DIEGO, CA 92103, Amount Awarded: $17,207
CONSUMER CREDIT COUNSELORS OF S.D. & IMPERIAL COUNTIES, 1550 HOTEL CIRCLE N., STE. 110, SAN DIEGO, CA 92108, Amount Awarded: $21,180
SAN DIEGO HOME LOAN COUNSELING SERVICE, 2859 EL CAJON BLVD., STE. 1A, SAN DIEGO, CA 92104, Amount Awarded: $14,630
CCC OF SAN FRANCISCO, 77 Maiden Lane, San Francisco, CA 94108, Amount Awarded: $22,000
HA OF MONTEREY COUNTY, 123 Rico St, Salinas, CA 93907, Amount Awarded: $10,000
HUMAN INVESTMENT POTENTIAL, 364 South Railroad Ave, San Mateo, CA 94401, Amount Awarded: $6,000
ECHO, 770 ''A'' Street, Hayward, CA 94541, Amount Awarded: $16,620
PROJECT SENTINEL, 430 Sherman Ave, Suite 308, Palo Alto, CA 94306, Amount Awarded: $10,586
CONSUMER CREDIT COUNSELING SERVICE OF ORANGE COUNTY, 1920 Old Tustin Ave., Santa Ana, CA 92705, Amount Awarded: $79,000
FAIR HOUSING COUNCIL OF ORANGE COUNTY, 1666 N. Main St. Ste 500, Santa Ana, CA 92701, Amount Awarded: $63,315
CONSUMER CREDIT COUNSELING SERVICE OF INLAND EMPIRE, 6370 Magnolia Ave. Ste 200, Riverside, CA 92506, Amount Awarded: $90,500
INLAND MEDIATION BOARD, 1005 Begonia Ave., Ontario, CA 91762, Amount Awarded: $58,736
WASHOE LEGAL SERVICES, 650 Tahoe Street, Reno, NV 89509, Amount Awarded: $20,000
CONSUMER CREDIT COUNSELING SERVICE OF SOUTHERN NEVADA, 3650 South Decatur Blvd., Suite 30, Las Vegas, NV 89103, Amount Awarded: $76,742
ADMINISTRATION OF RESOURCES AND CHOICES, 209 S. Tucson Blvd, Suite B, Tucson, AZ 85716, Amount Awarded: $7,000
CHICANOS POR LA CAUSA, 1525 N. Oracle Rd., Suite 101, Tucson, AZ 85705, Amount Awarded: $7,000
CONSUMER CREDIT COUNSELING SERVICES SOUTHWEST, 2802 N. Alvernon, Suite 100, Tucson, AZ 85712, Amount Awarded: $7,000
SOUTHEASTERN ARIZONA GOVERNMENTS ORGANIZATION, 118 Arizona Street, Bisbee, AZ 85603, Amount Awarded: $4,188
CONSUMER CREDIT COUNSELING OF ALASKA, 208 East 4th Ave, Anchorage, AK 99501, Amount Awarded: $12,000
COMMUNITY ACTION AGENCY, 124 New 6th Street, Lewiston, ID 83501, Amount Awarded: $10,000
HOUSING SERVICES OF OREGON, 34420 SW TUALATIN VALLEY HIGHWAY, HILLSBORO, OR 97123, Amount Awarded: $13,182
UMPQUA COMMUNITY ACTION NETWORK, 2448 WEST HARVARD, ROSEBURG, OR 97470, Amount Awarded: $10,000
CONSUMER CREDIT COUNSELING SERVICES OF OREGON INC, 3633 SE 35TH PL, PORTLAND, OR 97202, Amount Awarded: $12,000
PORTLAND HOUSING CENTER, 1605 NE 45TH, PORTLAND, OR 97213, Amount Awarded: $15,000

CONSUMER CREDIT COUNSELING SERVICE OF LANE COUNTY INC, 149 WEST 12TH AVENUE SUITE 100, EUGENE, OR 97401, Amount Awarded: $7,000

PIERCE COUNTY COMMUNITY ACTION AGENCY, 8811 SOUTH TACOMA WAY, TACOMA, WA 98499, Amount Awarded: $24,600

SPOKANE NEIGHBORHOOD ACTION PROGRAMS, 2116 EAST FIRST AVE, SPOKANE, WA 99202, Amount Awarded: $60,475

FREMONT PUBLIC ASSOCIATION, PO BOX 31151, SEATTLE, WA 98103, Amount Awarded: $24,600

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BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Policy on Giant Panda Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of policy on the issuance of permits for giant panda imports.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a policy on the issuance of permits for the import of live giant pandas to clarify what information the Service considers in making the permit findings under the Convention on International Trade in Endangered Species and the U.S. Endangered Species Act and to assist persons in filing a complete application. The policy is intended to complement, and not replace, the current permit procedures and issuance criteria in the regulations. The goal of this policy is that all imports directly benefit panda conservation through a coordinated effort that supports China's National Plan, National Survey, or Captive Breeding Plan. Based on current information on the status of pandas and their habitat, the policy emphasizes research and captive-breeding activities needed to ensure the captive population becomes self-sustaining and to recover panda populations in the wild. Thus, all monies used in a loan agreement or raised as a result of a panda import should fund giant panda conservation efforts, with a significant portion being used for priority *in-situ* conservation projects in China. Display of a panda would be allowed as an ancillary component that would not interfere with the research or captive-breeding activities. It is unlikely that the Service would be able to make the necessary findings to issue a permit to import animals removed from the wild after December 31, 1996. The policy also addresses the transfer of live pandas within the United States and the import or export of tissue samples. The policy supersedes previous policy. The suspension of the review and processing of permit applications to import live giant pandas is now lifted.

DATES: This policy is effective August 27, 1998 and will remain in effect until modified or terminated.

ADDRESSES: Questions regarding this policy should be addressed to the Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–700, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, telephone (703) 358–2093 or fax (703)–358–2280, (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Acronyms Used in This Notice

AZA American Zoo and Aquarium Association
CBSG Conservation Breeding Specialist Group (a program of the IUCN)
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora
ESA U.S. Endangered Species Act
IUCN World Conservation Union
MOC Ministry of Construction (China)
MOF Ministry of Forestry (China)
SSP Species Survival Program (a program of the AZA)
WWF World Wildlife Fund for Nature

Background

The survival and ultimate recovery of the population of the giant panda (*Ailuropoda melanoleuca*) in its ecosystem is the strong desire of the United States, the People's Republic of China (China), and the international conservation community. As such, the panda is subject to strict protection by its listing as an endangered species under the ESA and its inclusion in Appendix I of CITES. The Service is responsible for regulating pandas by deciding whether to grant permits to allow their movement into and within the United States. In making these decisions the Service, under the ESA, must determine whether the proposed activities are not likely to jeopardize the continued existence of the giant panda and would be for scientific research that promotes the conservation of the species or enhancement of propagation or survival, and under CITES, would be for purposes that are not detrimental to the survival of the species and that are not primarily commercial.

In the late 1980's, the proposals for temporary exhibition (short-term) loans of giant pandas became an increasingly controversial issue. During one period in 1988, the Service received reports that as many as 30 institutions may have been negotiating, or planning to negotiate, with various entities in China to arrange panda loans, potentially posing additional threats to the wild and captive populations of pandas. As a result the Service, through the public review process, published a policy on March 14, 1991 (56 FR 10809), for the issuance of import permits for short-term exhibition loans. In 1992, after the Service had issued a permit to the Columbus Zoo to import a pair of giant pandas for a short-term exhibition loan, the CITES Secretariat requested the Service to re-evaluate its policy on panda imports. The Service published a notice in the **Federal Register** on June 29, 1992 (57 FR 28825), requesting public comment on the existing policy.

Before re-evaluation of the existing policy on short-term exhibition loans was completed, the Service received an application from the Zoological Society of San Diego (San Diego Zoo) to import a pair of giant pandas for a long term, captive-breeding loan. On April 20, 1993, the AZA announced the development of a Giant Panda Conservation Action Plan, which has since been formalized. The plan outlines a captive-breeding program with support from 29 zoological institutions in North America. In addition, in July 1993, China's MOC (the agency generally responsible for China's *ex-situ* panda conservation) published the second giant panda studbook, listing all pandas then in captivity.

With the possibility of receiving an increasing number of import permit applications for giant pandas for public exhibition, scientific research, and/or captive-breeding purposes, the Service felt that a re-examination of the long-range implications of panda imports was necessary to ensure that such imports best serve the conservation needs of the species. Thus, on December 20, 1993, the Service announced in a news release the temporary suspension of the processing of any new permit applications for the import of live giant pandas during a reassessment of the policy. On May 4, 1994, the Service requested public comments and announced a working public meeting to assist the Service in formulating the draft revised policy (59 FR 23077). Public meetings were held by the Service on May 26 and August 23, 1994. The Service published the proposed policy for comment on March 30, 1995 (60 FR 16487). See that notice for a summary of the comments previously

received. The comment period on the new proposed policy was subsequently extended for an additional 60 days in 1995 and reopened for 150 days in 1997 to receive new information relevant to the proposed policy (60 FR 33224, 62 FR 35518, and 62 FR 53017).

The following summarizes new information received during the open comment periods of the proposed policy and discusses the rationale for decisions reflected in the final policy.

Population Status

The proposed policy summarized the information on the status of wild panda populations. The 1985–1988 survey remains the most current information on the status of wild panda populations. The most commonly accepted current estimate is that there are fewer than 1,000 pandas left in the wild. A new Chinese national survey is to commence in 1998.

Status of Captive Breeding in China and the Need for Breeding Efforts Outside of China

The proposed policy indicated that the captive-breeding program in China is not currently self-sustaining. While this remains true, advances have been made. In December 1996, the Chinese Association of Zoological Gardens, MOC, in collaboration with the CBSG, held a Giant Panda Captive Management Planning Workshop (MOC/CBSG Workshop) in Chengdu, China. The objectives of the workshop were to assist local captive population managers and policy makers to: (1) Formulate priorities for a practical and scientific management program that fully utilized all founders in captivity for the purpose of developing a healthy, growing population of giant pandas in China; (2) formulate a program that has linkage to the wild population, including the possible reintroduction of individuals, if needed; (3) eliminate the need to take more giant pandas from the wild; (4) develop a risk analysis and simulation population model for the captive population that can be used to guide and evaluate management and research activities; (5) identify useful technology transfer and training, including evaluating all adult, reproductive-age giant pandas in Chinese institutions; and (6) identify and recruit potential international collaborators, when needed, to enhance action. A final report was published that outlines recommendations in order to meet these goals.

Reintroduction

The proposed policy noted that reintroduction is a long-term goal that needs to be incorporated into coordinated international conservation efforts. The Service still understands that reintroduction is a stated long-term goal and sees value in discussing this issue as long as it does not overshadow efforts to protect panda habitat.

In September 1997, WWF and China's MOF (the ministry generally responsible for *in-situ* panda conservation) held a workshop on reintroduction. Several action steps were recommended: (1) Implement a national survey; (2) conduct further research aimed at improving birth and neonatal survival rates in the captive population; (3) continue to urge the government of China to completely implement the China National Plan for Panda Conservation (National Plan); (4) promote long-term national and international cooperation in raising funds; and (5) initiate an experimental program with pandas in the captive population designed to provide additional information on conducting successful releases.

Giant Panda Conservation Plans

The proposed policy outlined the status of the National Plan and AZA's Giant Panda Conservation Action Plan, and focused on funding of *in-situ* projects from the National Plan to ensure conservation of pandas in the wild. While the primary goal of the policy continues to be conservation of pandas in the wild, the policy has been broadened to include all of China's giant panda conservation efforts—the National Plan, National Survey, and Captive Breeding Plan (as updated by the MOC/CBSG Workshop report). The Service recognizes that although the National Plan and National Survey are the primary plans identifying high priority *in-situ* projects, the Captive Breeding Plan may have *in-situ* projects (e.g., surveys or reintroduction efforts). The Service also recognizes that although the Captive Breeding Plan is the primary plan identifying high priority *ex-situ* conservation projects, the National Plan may have *ex-situ* projects.

In September 1997, the Chinese hosted the International Symposium on Environmental Protection and City Development of the 21st Century in which panda conservation was a key topic. This symposium is a further example of the willingness of the Chinese to collaborate and cooperate on an international scale to further the conservation of pandas.

Purposes

The purposes of the ESA are to provide a means by which the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of certain conservation treaties and conventions. The purpose of CITES is to protect animals and plants to ensure that commercial demand does not threaten their survival in the wild by regulating trade in listed species. This policy is derived from these purposes. The proposed policy required that any import should be part of a coordinated international panda effort. While this should be a long term goal, it may not be possible to have all institutions worldwide holding pandas to be part of an international panda conservation effort. Therefore, the final policy clarifies that any U.S. institution wishing to import pandas should participate in a coordinated international conservation effort as much as possible and coordinate efforts in the context of China's National Plan, National Survey, or Captive Breeding Plan.

Wild-Taken Pandas

The proposed policy set out that no pandas removed from the wild after December 31, 1986, be allowed to be imported because of the potential threat of incentives for removal due to demand for captive pandas. The Service re-evaluated this determination and based on new information, changed the date to December 31, 1996. This new date coincides with the date of the MOC/CBSG Workshop where it was determined that no additional wild-caught pandas were needed to sustain the captive population. Concerns over take from the wild have decreased based on information from the giant panda studbook which shows only a few pandas have been removed from the wild in the past several years and on previous information from China on rescue guidelines. Changing the date will allow imports of genetically important wild-caught pandas that are already in captivity but have not bred. One aim of the AZA Giant Panda SSP is to focus their expertise on investigating why these pandas are not breeding. Known breeders would most likely remain in China as part of the breeding program. See further discussion of this topic in the Summary of Comments.

Age and Other Parameters of Animals Available for Importation

The proposed policy provided that no post-breeding age pandas (*i.e.*, 20 years and older) would be considered for

import because it was felt that the risks from transport were unacceptable. In the final policy the Service will use age as a factor in determining issuance of a permit as it relates to the proposed purpose of import. However, no upper age limit is set since the Service has no scientific information to show that it would be very risky to ship older pandas, but infirm animals will not be allowed to be imported if transport will compromise the health of the panda.

Length of Loans

In the proposed policy, the length of giant panda loans was to be determined by the purpose(s) of the loan and the length of time necessary to accomplish the goals of the import. This has not been changed in the final policy. The Service believes that internationally coordinated giant panda conservation efforts could incorporate various types of import, exchange, or loan arrangements requiring varying lengths of time.

Enhancement and Conservation Benefits of Specific Projects

The Service proposed that the majority of net profits (80 percent) should be used to fund *in-situ* conservation projects in China's National Plan. The Service continues to believe that *in-situ* conservation is critical to the recovery of giant pandas in China, but recognizes the need to ensure to the extent possible that the captive-breeding program in China is self-sustaining. Additionally, funding of captive breeding and research can potentially contribute toward conservation of pandas in the wild, particularly now that China has a scientifically based captive-breeding/research plan. Thus, the policy now states that a significant portion of all funds associated with the loan, not just net profits, should be used to fund *in-situ* conservation projects, instead of designating a specific percentage. This retains the appropriate emphasis on *in-situ* conservation, but allows more funds to support *ex-situ* projects as primarily outlined in the Captive Breeding Plan. The proposed policy also outlined a regime to identify and track project implementation. This has been retained, but project selection may now be expanded beyond the National Plan to include the National Survey and Captive Breeding Plan.

The Service continues to emphasize the need to relate giant panda imports to the conservation and enhancement of the species in the wild, especially through funding of *in-situ* projects. Presumably, most of the imports will be from China but funding associated with imports of pandas from other countries will also need to be linked to *in-situ* conservation projects, although more flexibility will be allowed for these imports. It is expected that most imports would be for multiple purposes and funds (loan money and/or net profits) would be generated. The allocation of funds to panda conservation satisfies part of the conservation and enhancement findings required by an import under the ESA. If no funds are associated with the import or transfer of live pandas, the proposed activities must significantly contribute to panda conservation in the wild. On the other hand, if funds are involved, then a significant portion of all funds, including net profits received by an applicant during a loan period, regardless of the source of the panda, should be used for conservation projects.

Scientific Research

The Service proposed that imports for scientific research must contribute to the conservation of pandas in the wild and in captivity. The final policy has added some flexibility in that the research can be more focused on contributions for captive animals if the import is for dual purposes (scientific research and enhancement of the propagation and survival of the species under the ESA).

There needs to be continual coordinated efforts to set priorities for panda research. China's National Plan provides the following research priorities: (1) Habitat improvement; (2) captive breeding; (3) ecology, population status, and monitoring; (4) rearing and nutrition; (5) prevention of illness; and (6) reintroduction of captive pandas to the wild. The ''Giant Panda Breeding Plan'' developed in China lists the following areas that need basic research: (1) artificial insemination biology and techniques; (2) breeding behavior; (3) disease prevention; (4) reproductive physiology; (5) diet; (6) mating ability; (7) reproductive longevity; and (8) fertility. These priorities for the captive population are further clarified in the report from the MOC/CBSG Workshop. Because of the precarious level of the panda population, it is important that research findings are shared quickly and methodologies are transferred to China for use in the field and in the captive-breeding program.

The ESA regulations [50 CFR 17.22(a)(1)(vii)] provide that an applicant must give a full statement of the reasons the applicant is justified in obtaining a permit for scientific purposes, including details of the activities. The final policy continues to outline that the applicant must provide a research proposal that demonstrates that the research is properly designed and can be accomplished with the available expertise and resources. The Service will not categorize or identify acceptable kinds of research, but will retain the option of evaluating the validity and/or current need of the proposal based on priorities included in China's National Plan, National Survey, or Captive Breeding Plan, or any subsequent modification of these plans. If the panda(s) would also be on exhibition, the applicant should have a monitoring plan to ensure that the display does not interfere with the research or bias the data. Thus, under the proposed policy the applicant needed to have adequate facilities separate and apart from the public exhibition areas in case it is found that exhibition interfered with the research. This same guidance was included in the Captive Breeding section. Through the comments, it was evident that the wording was interpreted to mean applicants needed facilities totally separated from the exhibit. The final policy clarifies that the intent is for an applicant to have off-exhibit facilities of sufficient size to house pandas on a long term basis, if necessary, to conduct research or breeding, but not necessarily be physically separated.

Captive Breeding

The ESA regulations [50 CFR 17.22(a)(1)(viii)] provide that an applicant demonstrate a willingness to participate in a cooperative breeding program and maintain or contribute data to a studbook. The current issuance criteria require the Service to find the proposed activity will not directly or indirectly conflict with any known program intended to enhance survival probabilities of the population. Thus, the proposed policy emphasized that institutions that import pandas for captive breeding should participate actively in a coordinated international panda conservation effort and needed to supplement the breeding program in China. The final policy continues to require that imports for captive breeding supplement China's breeding program but ties such participation to the MOC/CBSG Workshop report. In addition, to assist in wild panda recovery and development of a self-sustaining captive population, captive-breeding activities should have a research component.

The continued decline of the wild population of giant pandas and the increasing fragmentation of its habitat may make it increasingly important to establish a self-sustaining captive

population. The current captive population represents about 10 percent of the total panda population, captive and wild. As of December 1996, there were 124 giant pandas in captivity in 38 institutions: 104 animals were in institutions in China and 20 pandas were in 9 institutions located outside of China. In China, five institutions had 73 animals and were responsible for nearly all the breeding success. Seventeen institutions held single animals. The Chinese recognize that these captive pandas need to be moved for better breeding opportunities and to ensure that all mature individuals participate in breeding. Of the 20 pandas currently held in 9 institutions outside China, 3 institutions hold only 1 panda. These data demonstrate the great need to coordinate the movement of captive-held pandas internationally.

The captive-breeding program in China is not currently self-sustaining. Between 1936 and 1988, 345 pandas held in captivity produced 67 litters of 106 cubs, with only 32 surviving more than a year. In recent years, improvement in management and joint efforts within China enhanced breeding and survival rates and reduced the infant mortality rate of the captive population. However, a review of the International Studbook of the Giant Panda suggests that the current number of founders contributing to the captive population is inadequate. According to the studbook, the current captive population is descended from 32 founders. However, recent research suggests that fewer than 32 founders may exist because the paternity of some of the captive-born pandas is uncertain. Ongoing research should solve this question. The current captive population includes 48 wild-caught pandas that have not reproduced, but only 32 of these are currently of reproductive age. If these pandas can be encouraged to breed, the captive population will not need additional genetic material from the wild population to become self-sustaining. This is supported by information from the 1996 MOC/CBSG Workshop.

Permittees who import pandas for captive breeding should actively coordinate with all panda holders as much as possible and must participate in the AZA's Giant Panda SSP or a similar plan approved by the Service. Imports of pandas for the sole purpose of producing more pandas would not likely satisfy the required finding of enhancement under the ESA. Since it is expected most of the pandas to be imported into the United States for breeding would have a history of not reproducing, it is anticipated that there will be a research component to any captive-breeding activities.

Exhibition

The policy proposed two alternatives for exhibition: (1) Exhibition solely as an ancillary component, and (2) short-term exhibition. The final policy reflects Alternative 1. Therefore, applications for import of pandas solely for exhibition purposes would not be approved as a general matter. This is consistent with the AZA moratorium on short-term panda loans. Educational display (exhibition) would be allowed as an ancillary component of a scientific research or research/captive-breeding program, when the display will not interfere with the research or captive-breeding activities. Even temporary loans of pandas solely for display to another institution during the non-breeding season would likely not be allowed, as this could be disruptive to behavioral interactions, endocrine monitoring, and research designed to maximize breeding success.

With advances in coordinated conservation efforts for the giant panda, if institutions in the United States are exhibiting captive pandas, the Service believes that the institutions should focus their energy on activities that best ensure the recovery of wild pandas. The Service recognizes that the use of any of these animals for short-term exhibition could detract from the overall captive conservation efforts by stimulating institutions to use resources for short-term exhibition, rather than committing resources to needed captive breeding or research. Furthermore, the use of breeding age pandas for short-term exhibition loans could increase the stress and reduce acclimation of pandas to breeding surroundings while minimizing the opportunities for important research and captive-breeding activities. Thus, the Service, as a matter of policy, discourages the issuance of permits for the import of pandas for solely exhibition purposes (even though such exhibits might raise substantial funds to go back to China). Every panda import must have intrinsic conservation benefits in its own right, in addition to financial contributions to China.

Primarily Commercial

Under CITES, Appendix-I species, such as giant pandas, cannot be imported for primarily commercial purposes. Therefore, an applicant for a giant panda import permit must provide sufficient information to the Service to consider in making a finding that the import is not for primarily commercial purposes [(50 CFR 23.15(d)(7)]. Thus, the language on internal accounting systems was clarified in the final policy and monitoring visitation was added as a way to provide additional information needed to calculate net profits. No other major changes were made in the final policy in this section.

Suitability of Facilities

Under the CITES regulations, the recipient of a giant panda is required to have suitable housing and equipment to care for the panda(s) [50 CFR 23.15(d)(6)] and under the ESA regulations at 50 CFR 17.22(a)(2)(vi), the facilities and resources must be adequate to successfully accomplish the objectives stated in the permit application. Applicants for a giant panda permit must submit sufficient information to show that they meet these requirements. The proposed policy enabled applicants to provide copies of existing protocols for monitoring health and behavior recommended by a coordinated international panda conservation effort. The final policy allows applicants to submit protocols recommended by a coordinated panda conservation effort, such as the AZA Giant Panda SSP, since there is no one true organized international panda conservation effort at this time. Additionally, the requirement to note any roads adjacent to panda facilities was dropped since there is no evidence that shows activity or noise from adjacent roads negatively affects panda behavior.

Transfers of Pandas to Other Entities Within the United States

The policy clarifies that persons intending to transfer live pandas in the United States will need to meet the provisions of the policy, either by obtaining an interstate commerce permit or prior approval of the Service as conditioned by the import permit.

Summary of Comments and Responses

Comments on the proposed policy were received during four comment periods (March to May 1995, June to July 1995, July to September 1997, and September to November 1997) and were considered in formulating this final policy. The following summarizes those comments organized by elements in this policy. The Service received 205 comments (letters, form letters, and form post cards) from 4 zoological institutions, 5 conservation groups, 7 animal interest groups, 3 business or trade organizations, 1 State agency, 7 foreign governmental agencies, and 178 individuals. The Service has reviewed all of these written comments. Comments or information updating the data presented in the **SUPPLEMENTARY**

INFORMATION section are incorporated into that section of this final notice.

Purposes

Issue: Several commenters suggested that there was no single coordinated international panda conservation effort and that there should be flexibility and discretion to pursue the primary goal of survival of the species.

Response: The Service agrees that it may not be possible to have all institutions worldwide that have pandas be part of one international panda conservation effort. However, this should be a long term goal and any U.S. institution wishing to import giant pandas should participate in a coordinated panda conservation effort as much as possible and should work closely with the Chinese government to ensure their efforts are based on recommendations of China's National Plan, National Survey, or the Captive Breeding Plan. The language has been changed appropriately.

Issue: One commenter stated that the Service should withdraw the proposed policy, abandon efforts to set any specific policy for imports of giant pandas, immediately lift the moratorium on panda imports, and evaluate imports on a case-by-case basis.

Response: The Service disagrees since pandas are critically endangered and engender much public interest. The purpose of the policy is to openly and clearly outline how applicants who wish to import giant pandas can meet the criteria of CITES and the ESA. This policy will be applied to each application for import on a case-by-case basis and will provide clear guidance for consistent evaluation so pandas in the wild will benefit.

Issue: One commenter thought the ban on importing giant pandas should remain in place so that maximum conservation resources for saving these animals could be focused on saving them in their natural habitat. Other commenters stated that no giant pandas should be held in a zoo.

Response: The Service agrees that conservation efforts should be primarily focused on saving pandas in the wild. However, pandas that are already in captivity can serve a role in conservation of pandas in the wild. Captive pandas offer opportunities to conduct needed research and can help to educate people worldwide on the plight of pandas. Money generated from importing and exhibiting captive pandas can be used to fund *in-situ* panda projects. While in the past, the motivation for removing pandas from the wild was questionable, it is clear from the December 1996 studbook, that very few pandas have been removed from the wild in the past several years and the Captive Breeding Plan states that no additional wild-caught pandas are needed to sustain the captive population. The Service does not believe that importing captive pandas into the United States at this time under the final policy will lead to further removal from the wild. However, the Service will consider this when evaluating specific applications and not allow the import of pandas removed from the wild, except in exceptional circumstances. The Service would be remiss if it did not allow activities with captive pandas to occur, within the criteria of CITES and the ESA, that can be shown to benefit pandas in the wild.

Wild-Taken Pandas

Issue: Several commenters did not believe the proposed use of December 31, 1986, as the cut-off date to be justified in light of current information on the limited removal of pandas from the wild and the under-represented founder stock of the captive population. Another commenter stated that they believed that the studbook data was incorrect and that the MOF was actually ''rescuing'' more pandas than was reflected in the studbook.

Response: The Service agrees that caution should be used when considering imports of wild-caught pandas into the United States so loans will not stimulate further wild take. However, a number of the wild-caught pandas already in captivity have not bred and are very important genetic founders, as determined in the MOC/CBSG Workshop. The AZA Giant Panda SSP recognizes this as an area where U.S. zoos can use their specialized expertise. The Service agrees that this would be an appropriate issue for U.S. zoos to become involved in since pandas that are known breeders would most likely remain in China as part of the breeding program. Non-breeding pandas could potentially be exported to the United States to research why they were not breeding. Additionally, the MOC/CBSG Workshop report noted that no additional wild-caught pandas were needed to sustain the captive population based on the assumption that more captive pandas will become successful breeders. The Service changed the date to December 31, 1996, to coincide with the MOC/CBSG Workshop date based on information from the workshop, including the updated studbook showing few recent wild-caught pandas being added to the captive population, and on the previous information from China on rescue guidelines. At this time, the Service has no evidence that the studbook information is incorrect. Should information become available through genetic research to show that more wild-caught animals have been added to the captive population in recent years, the Service will consider revising this section of the policy. Since each import of a panda will be evaluated on a case-by-case basis, the Service still reserves the right to deny the import of a wild-caught animal, regardless of when it was removed from the wild, if the Service determines that the removal from the wild may have been detrimental to the species. It is unlikely that the Service would be able to make the necessary finding to issue a permit to import any pandas ''rescued'' from the wild after December 31, 1996, since it was concluded that these pandas are not needed for captive population maintenance. Recently ''rescued'' pandas should remain in China to either be returned to the wild or used in their captive-breeding program.

Age and Other Parameters of Animals Available for Loans

Issue: Several commenters agreed with the Service's proposal that post-breeding age pandas not be considered for import due to risks associated with transport. Several other commenters disagreed, indicating there is no data to support the proposal.

Response: The Service agrees there is a lack of data on the risk of transporting pandas over the age of 20, and therefore did not set an upper age limit for pandas to be imported into the United States. Additionally, since current research is not focused on aging in pandas, this may be one area that U.S. institutions may want to conduct research. The Service feels it should not eliminate the possibility of doing this type of research in the United States. The Service will, however, consider age as a factor in determining issuance of a permit as it relates to the proposed purpose of import on a case-by-case basis. Regardless of age, the Service agrees that, except in an emergency situation where there is no reasonable alternative medical care available, infirm animals should not be imported unless the medical condition has improved to the point that transport will not further compromise the health of the panda nor interfere with the purpose of the import.

Length of Loans

Issue: Several commenters were opposed to short-term loans, in particular for exhibition purposes. Another commenter felt length of loans should be a function of permit purposes and flexibility should be allowed in

order to accomplish the proposed activities in a reasonable period of time.

Response: The Service feels the language in the proposed policy allows flexibility but appropriately ties the length of the loan to the proposed purpose of the import. Thus, the language in this section has not been revised.

Enhancement and Conservation Benefits of Specific Projects

Issue: The MOC pointed out that China does not have one national program for the conservation of the panda but both their agency and MOF have panda conservation programs.

Response: The Service has clarified the language in this notice.

Issue: The Service received a number of comments on the proposed distribution of net profits ranging from agreement with the proposed policy to suggestions on different ways to divide the net profits, including not designating a ratio. One commenter thought the policy should not require all net profits be used for panda conservation only. Another thought China should decide how funds are used.

Response: The Service agrees there should be some flexibility in how net revenues are used for panda conservation but also strongly believes that *in-situ* conservation should remain the central focus to panda recovery. The Service has changed the policy to read that a significant portion (rather than 80 percent) of all revenue related to the holding of the pandas, not just net profits, should go to *in-situ* panda conservation. Because there appeared to be some confusion in the comments regarding the source of funds so allocated, the Service has also changed the language in the policy to clarify this issue. To make the required findings under the ESA and CITES, and work toward the recovery of the giant panda, the Service believes that all panda funds should be used for panda conservation. The Chinese government and the applicant select the projects to be funded in the loan agreement. The policy clarifies that the Service will consider whether these are priority projects in panda plans developed by the Chinese.

Issue: One commenter stated that it was unreasonable to assume that any movement of giant pandas generates funds and this part of the policy concerning non-Chinese pandas be omitted. Several commenters suggested that the criterion of ownership for allocation of funds be dropped.

Response: The Service does not agree that it is unreasonable to assume that any movement of pandas generates funds. The Service would agree that putting pandas on exhibit may not result in an increase in profit *per se,* but there have not been any imports which demonstrate this. However, there are many examples showing that pandas on exhibit generate revenue. Since the Service is changing the policy language for pandas belonging to China to be more flexible, there would be little difference in the distribution of revenue for the display of pandas from China and for display of pandas from non-Chinese institutions. Because of this, the Service has decided to eliminate the distinction between pandas owned by China and pandas belonging to other entities. The final policy states that a significant portion of all revenues for any panda import should be used for *in-situ* conservation of pandas in the wild with the remainder being used for either *in-situ* or *ex-situ* panda conservation projects.

Issue: One commenter suggested that the Service clarify the relationship between the Enhancement section and the Primarily Commercial section by combining the sections or sequencing them to more clearly acknowledge the ties between the two sections.

Response: The Service agrees and revised the policy language to better explain these relationships. In order to validate the CITES finding that the import is not for primarily commercial purposes, the policy outlines that any net profit, over the time of holding the animal(s), should be used to fund panda conservation projects in China. In addition, the use of net profits and loan agreement monies to fund conservation projects is part of the findings under the ESA, which requires that the import benefit the conservation of the species in the wild. The Service believes that to reach conservation and enhancement of pandas in the wild, all funds generated by pandas should be used for pandas and not directly for other species. The Service also continues to believe that permittees need to track net profits and project status to ensure the integrity of the original findings.

Issue: Commenters both supported and opposed the proposed policy requirement to monitor progress of projects funded for panda conservation in China.

Response: The Service believes the use of funds in meaningful panda conservation activities in China is a key means to help reach conservation and enhancement under the ESA and the ability to verify that this is being met is crucial. Therefore, the Service did not alter the requirements in this section of the policy.

Issue: One commenter noted that there are several types of *in-situ* conservation projects that should be the highest priorities for support from panda loan revenue, including the National Survey scheduled to begin in 1998.

Response: The Service agrees that priority should be given to funding the National Survey and urges institutions to strongly consider funding this effort during their negotiations to obtain pandas. The Service also agrees that it may be useful to utilize panda revenues to integrate field staff into projects and to support field educational activities and will consider this when reviewing giant panda import applications.

Scientific Research

Issue: One commenter stated that scientific research on panda reproduction should be conducted only in the wild, not in zoos or artificial study facilities. Other commenters stated that the policy should recognize the expertise and capability outside of China that can be used to assist the international effort.

Response: The Service believes there are studies which can be conducted on captive animals that would provide information useful in studying or managing wild panda populations. Captive pandas should be utilized to the greatest extent possible to benefit the wild populations. Scientific research both in China and the United States is one area where this can happen.

Issue: Two commenters thought the proposed policy was too intrusive and burdensome. The requirements exceed the Service's goal of ensuring that applicants are engaging in valid and needed research and could cause delays or limit research. Two commenters supported the Service's detailed requirements.

Response: The Service believes an applicant must clearly show that the scientific research is *bona fide* and will contribute to the conservation of the panda, particularly in the wild. This information is similar to information researchers routinely submit to receive other research grant funds and is information that a scientist needs to conduct a valid investigation. The Service needs to be informed of major procedural changes in the research since the granting of an import permit for scientific research is based on a particular research proposal. Radical changes in a scientific investigation could be reason for suspending a permit if the research no longer contributes to panda conservation. The Service will make every effort to evaluate any proposed changes in a research program

in a timely manner so research is not interrupted, but it is also important for the permittee to alert the Service to changes as soon as possible.

Issue: One commenter suggested that milk be added to urine, feces, and synthetic DNA as substances that would not require a permit for export or import, when collected as outlined in the proposed policy. Another commenter indicated that until another decision is made by the Conference of Parties to CITES, the Secretariat considers urine, feces, and synthetic DNA as covered by CITES.

Response: The Service has not included milk in this short list of exempted by-products at this time since, for the most part, it cannot be obtained without manipulating an animal. The Service has written the Secretariat outlining the U.S. position on urine, feces, and synthetic DNA and recognizes that some countries may require permits for these products. That is why the policy recommends that people contact the foreign CITES Management Authority to meet their requirements.

Issue: One commenter disagreed that facilities to house pandas needed to be separate and apart from the public exhibition facility as there is no evidence that exhibition would interfere with research and it could be extremely costly. Another commenter stated that a recipient zoo should provide adequate off-exhibit space in which to conduct research.

Response: In considering the comments, the Service changed the policy to no longer require housing or research areas totally separate and apart from the exhibition areas, but the applicant/permittee should have adequate housing away from public view should the Service determine that exhibition of the pandas is not compatible with the research.

Captive Breeding

Issue: One commenter strongly agreed with the need to: (1) Coordinate the movement of captive-held pandas internationally since the captive-breeding effort in China is not currently self-sustaining and (2) enhance captive propagation efforts, with special emphasis on unrepresented founders, particularly males.

Response: The Service continues to believe that breeding of captive-held/captive-born pandas needs to be coordinated internationally. The MOC/CBSG Workshop held in December 1996 in Chengdu is an excellent step toward this goal.

Issue: One commenter recognized the concerns of the Service about the role of captive breeding but felt requiring a detailed breeding protocol was unnecessary and intrusive. Another commenter stated that since the policy requires all applicants to be members of a coordinated international effort, the Service should defer to those coordinated efforts (AZA programs and SSPs) to ensure that an institution has the necessary facilities and expertise to import a panda.

Response: The Service needs to be assured that any applicant wishing to import a giant panda for breeding has the necessary knowledge, expertise and facilities to accomplish their goal. In order to be more flexible, the Service will accept a statement that the applicant is following the AZA Giant Panda SSP recommendations for breeding protocols in lieu of submitting the actual protocol. However, the Service will still require submission of facility and exhibit information in the form of photographs, diagrams, and written description with each application.

Issue: One commenter did not agree that the name, position, and qualifications of the individual making the decision to take animals off display must be supplied but thought that this decision should be made by the institution's animal managers.

Response: The Service agrees that the submission of this information is not necessary and has removed the language from the policy.

Exhibition

Issue: A majority of the commenters supported Alternative 1 which proposed to allow imports for exhibition solely as an ancillary component. One commenter, while generally supporting this alternative, also recommended that the Service recognize the role of exhibition in raising revenues necessary to support conservation efforts.

Response: The Service selected Alternative 1 for the final policy. Although exhibition typically cannot be the sole purpose of an import, the Service expects it will be a component of most applications and the funds raised will be considered when making the enhancement finding under the ESA.

Primarily Commercial

Issue: One commenter stated that the Service does not have the authority to propose that all net profits resulting from the import of a panda for long term captive-breeding loans be used for the conservation of pandas in the wild; the Service should recognize that long term breeding loans are inherently not for primarily commercial purposes and that the intended purpose of the loan, to save the giant panda, is non-commercial.

Response: The Service has the authority to propose how net profits should be used, since this is a part of the not for primarily commercial purposes and conservation/enhancement findings. The Service does not have enough information at this time to conclude that long term breeding loans are inherently not commercial. The intent to save giant pandas does not necessarily mean that an institution would not also want to generate revenue while contributing to the panda conservation effort. Historically, the exhibition of pandas has generated much public interest and short-term loans have generated much revenue for the institution exhibiting them. There has only been one long term loan undertaken and it has only been in effect for little over a year. Until more experience is gained, the Service needs to review each application for import and receive information, in the form of accounting for profit, to satisfy itself that the initial finding that the import was not for primarily commercial purposes remains valid for long term loans.

Issue: One commenter was concerned about the degree of specificity applied to allowable expenses and suggested language to clarify reasonable expenses.

Response: The Service agrees that these recommendations will provide additional flexibility and has incorporated them into the policy. The clarifying changes do not affect the Service's ability to review the data submitted and to ensure that its finding that the permitted activity is ''not for primarily commercial purposes'' remains accurate.

Issue: Two commenters felt that to make the not-for-primarily commercial finding requires an initial determination concerning the overall purpose as well as a need for ongoing review in order to be satisfied that those purposes are being met. One commenter added that the same measures for compliance with CITES have to be met for each and every applicant.

Response: The Service agrees with this evaluation which is reflected in the policy.

Issue: Commenters sought clarification of the term ''indirect revenues.'' One of these commenters suggested that since the proposed policy used only direct expenses, the final policy should use a similar approach for calculating revenue. Commenters also stated that the Service should clarify that the cost of the loan is included in reasonable expenses. One commenter

added that the cost of technology transfer programs and education programs in the United States also be included.

Response: The Service agrees with the above and has changed the policy.

Issue: Two commenters stated that it will be extremely difficult for an institution, over long periods of time, to accurately assess the exact ''net profits'' related to a panda loan.

Response: The Service agrees that it may be difficult to assess exact net profits over time, but reasonable information is necessary to continue to assess that the import is not for primarily commercial purposes.

Issue: One commenter believed that exhibition of pandas for whatever purpose remains ''primarily commercial'' and thus falls under the restriction applied to CITES Appendix-I listings.

Response: The Service does not agree that exhibition of pandas should automatically be determined primarily commercial. It is true that exhibition of pandas generates revenue, but if no net profits are generated or if net profits are generated but are used for conservation of the affected species, the Service can conclude that the import was not for primarily commercial purposes.

Issue: Several commenters suggested language changes to help clarify the intent of the section on internal accounting systems.

Response: The Service agrees with these suggestions and has revised the policy accordingly.

Issue: One commenter felt the proposed policy was too restrictive in requiring approval from the Service if the permittee changes the conservation projects to be funded from those presented in their application; this requirement was unnecessary and appears to intrude in the internal affairs of a sovereign nation since all conservation projects are to be high priorities of the China's National Plan.

Response: To make the findings under the ESA and CITES, the Service needs to consider whether the funds will be used to support priority conservation projects identified by the Chinese government in the National Plan, National Survey or Captive Breeding Plan. The Service sees this as a way to support China's management of pandas. Requiring permittees to obtain approval from the Service if they change the conservation projects to be funded ensures that funds are going to priority projects identified by the Chinese government in these plans.

Issue: One commenter recommended that reports only be required on a multiple-year basis, such as every five years. Another commenter recommended that the Service carefully review and monitor financial reports annually to determine whether the commercial test is actually being met, and that the policy provide for possible adjustments in conservation funding commitments based on actual panda-related income.

Response: The Service believes that it is important to review the information on primarily commercial before too much time elapses and has retained the requirement for an annual report.

Issue: One commenter was concerned by the level of what they considered to be micro management; suggested the Service is not equipped to deal with the internal accounting procedures and annual reports as proposed in the policy; and thought the use of marketing data (such as visitors surveys) would be a more productive way to obtain information on revenue earned due to exhibition of giant pandas.

Response: The Service feels that the collection of this level of information has been useful in evaluating the current permit held by the San Diego Zoo. The Service agrees that marketing data such as visitation monitoring is also important to collect since it allows for more accurate calculation of how much revenue a facility is generating because of pandas and has revised the policy.

Issue: One organization stated that the disparate treatment business corporations are subjected to under the current policy for ''short-term exhibition only'' loans should have no place in a final policy dealing with long term captive-breeding loans. They added that it is the intended use of the species, not the tax status of the applicant, that should be of concern and that the Service should not impose a higher burden of proof on business corporations to engage in long term captive-breeding loans under the AZA plan. Another commenter stressed that the difficulty for commercial entities is inherent in the treaty language itself; since commercial entities have as a fundamental purpose the pursuit of profit, assurances will be sought from profit-making entities just as from non-profit entities that the requirements of CITES are being met in an ongoing manner.

Response: The Service views ''for-profit'' (business corporations) institutions as having a more difficult time in satisfying the burden of proof, since they are founded with the purpose of making a profit and have additional factors, such as a fiduciary duty to stockholders, that must be addressed in the finding that an import is not for primarily commercial purposes. The captive breeding example in Resolution Conf. 5.10 specifically mentions the need to account for benefits to stockholders.

Issue: One commenter cited *WWF* v. *Hodel*, Civ. No. 88–1276 (D.D.C. 1988) as evidence that the Service acknowledged that CITES does not require the types of restrictions that the proposed policy applies in connection with the issue of commercialism. Another commenter stated that they are also well aware of this case and pointed out that the position taken by DOI on commercialism was in fact rejected by the Court in that matter.

Response: In *World Wildlife Fund* v. *Hodel*, District Judge Johnson found that the Service had failed to articulate the reasons supporting its ''implicit'' finding that the importation of giant pandas by the Toledo Zoo for short-term exhibition purposes ''was not primarily for commercial purposes.'' Judge Johnson, after determining that the additional fee charged by the Toledo Zoo for the public to view the pandas was ''significant to a consideration of the CITES requirement that the import was not primarily for commercial purposes'', issued a preliminary injunction against the Toledo Zoological Gardens to prevent the collection of such additional fees. While Judge Johnson's ruling did not prescribe a firm boundary between those activities that are primarily commercial in nature from those that are not, her ruling did correctly identify the responsibility of the Service to explain the basis of its permitting action with particular emphasis on statutory and treaty-based requirements and criteria. In dealing with complex permitting questions like those covered by this policy, it is the Service's goal that decisions be made on the basis of complete administrative records and fully explained records of decision. This policy was intended to achieve that goal, especially on the complex findings and determinations that must be made as a prerequisite to issuing any import permits for giant pandas.

Suitability of Facilities and Care

Issue: One organization commented that their experience with pandas has led to the realization that exercise and open space may be much more important for the well-being of pandas than had previously been thought. The suitability of facilities and care should be directly associated with the purposes of the permit.

Response: The Service agrees the suitability of facilities and care is tied directly with the purposes of the permit.

In addition, the amount of open space or opportunities for pandas to exercise will be considered during review of permit applications when deciding whether permit issuance criteria under CITES and the ESA are met.

Issue: One commenter did not understand why the Service needs to know the existence of adjacent roads to the panda facility and urged this requirement be deleted.

Response: At the time the proposed policy was written, the Service was concerned about the impact of traffic noises on panda behavior. Since then, the Service has received information from facilities holding pandas that pandas are unaffected by routine traffic noises. Thus, this has been deleted from the policy.

Issue: One commenter suggested that the Service require that the importer account for the animals' psychological, behavioral, and physical needs while housed prior to, after, and during transport. Additionally, a veterinarian with expertise in panda well-being should be required to travel with any imported animal to ensure direct and immediate care throughout the trip.

Response: Importers of pandas are required to ship the animals under humane and healthful conditions and follow the regulations on providing care, food, and water during transport (50 CFR Part 14, Subpart J). The Service agrees that it is a good idea for a veterinarian or other animal care personnel with expertise in panda care to accompany pandas. In the past, China has required Chinese caretakers to accompany pandas in transit. Since the Service is not aware of any problems that have occurred during prior shipments of pandas, the Service does not believe it is necessary to change the policy at this time.

Transfer of Pandas to Other Entities Within the United States

Issue: One commenter did not understand the grounds for requiring an interstate commerce permit to transfer loaned giant pandas to other entities within the United States.

Response: Under the ESA, the transfer of a giant panda to another institution across state lines constitutes interstate commerce, and therefore requires an ESA permit, since it is expected that the receiving facility gains financially or otherwise by having that animal at their facility. The Service has a long-standing policy that legitimate non-commercial breeding loans do not need interstate commerce permits because they generally do not involve the transfer of specimens in the pursuit of gain or profit. However, panda loans present exceptional facts that require the recipient of any panda transfer to address all the elements of the panda policy and interstate commerce permits would be required for any interstate transfer since exhibition of giant pandas generate much public interest and monetary gain for the exhibiting institution.

Issue: One organization commented that it is burdensome and decreases the flexibility in a breeding program to require an applicant to indicate in the import application any intended transfers of the pandas within the United States at a later time.

Response: The Service agrees that an importer may not be able to project whether the pandas they wish to import would need to be moved to another facility at a later date and has deleted the requirement to anticipate interstate movement prior to import under the policy. However, the subsequent transfer of a panda will need to meet the provisions of the policy through an interstate commerce permit or intrastate transfer authorization from the Service as conditioned under the import permit. This is to ensure that all transfers meet the approval of the Chinese government or the entity that owns the animal and meet the purposes of the original import under CITES and the ESA.

Required Determinations

Issue: One organization stated that Executive Order 12866 requires any significant regulatory action be reviewed by the Office of Management and Budget. The Executive Order defines ''significant regulatory action'' to include those actions which ''* * * raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' Section 1(a) of the order states: ''The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law * * * or are made necessary by compelling public need, such as material failures of private markets to protect or improve * * * the environment * * *'' Based on the definition of ''significant regulatory action'' and Section 1(a), the commenter asserted that the Service's proposed policy should be subject to OMB review. They further stated that their comments on the proposed policy question whether the ''primarily commercial purposes'' standards the Service proposes ''are required'' by law, and whether there is a compelling public need for the policy based on ''* * * material failures of private markets to protect or improve * * * the environment * * *'' The commenter believes that the ''private market'' of zoological institutions, and specifically in this case the AZA, has protected and continues to protect endangered species like the panda through non-governmental captive-breeding programs.

Response: While the Service believes that this action is a policy and not a rule, it has followed the Administrative Procedures Act, the Regulatory Flexibility Act, and Executive Order 12866. The policy sets out guidance that is intended to assist the decision-makers and staff within the Service to carefully review applications for panda import permits, to ensure that all statutory and treaty-based criteria have been addressed and fully explained in the administrative record, and, assuming that these goals are met, to thereby enhance the conservation of the giant panda. The policy does not prescribe new restrictions or limitations of general application to those who would apply for such permits, but instead sets out a ''road map'' on how to develop and submit a complete application in light of the best available scientific information available to the Service at this time. No regulatory impact analyses are required by law for the adoption of this statement of agency policy. Even if such analyses were required, nothing in this policy could be construed to impose an economic impact that does not already exist as a result of the ESA and CITES.

Other Issues

Issue: One commenter pointed out that CITES Notification No. 932 (Loans of Giant Pandas) does not carry forward the implied criticisms of captive breeding outside of China contained in the CITES Standing Committee document, Doc. SC.36.15. The notification explicitly recognizes that there may well be a role for institutions outside of China for captive breeding. The repeal of Notification No. 477 removes any open criticism by the Secretariat or the Standing Committee of captive breeding, especially as this purpose relates to commercialism.

Response: The Service agrees that Notification No. 932 recognizes the export of giant pandas for captive breeding under specific circumstances, and believes this has come about because of the positive changes in panda conservation efforts in China and elsewhere.

Issue: One commenter believed that reasonable assumptions on the question of commercialism can be drawn from the Notification and Doc. SC.36.15. The first assumption is the Secretariat's view that the giant panda is not actually or

currently threatened by international trade. The second assumption is that panda loans can be made in accordance with the normal provisions of CITES. All that is necessary in addressing commercialism is application of the standard provisions of Conf. 5.10.

Response: The Service agrees. The Secretariat also cautioned that care needs to be taken that the money offered to China reflect the real value of pandas to that institution and are not a ''token gesture,'' with the bulk of the monies being retained by the institution itself for its own benefit. The Secretariat noted that the latter would be incompatible with the requirement that imports of Appendix-I species be for purposes which are not primarily commercial.

Issue: One commenter stated that the application of the CITES standard to only export Appendix-I animals in exceptional circumstances should not be confused with the subjective and limited definition, when there is a high degree of probability of captive breeding taking place. Another commenter added that the emphasis should be on the ''best interest of the whole species.''

Response: The Service believes that Section 3.c of Notification No. 932 should be interpreted to mean that breeding age animals should only be exported to institutions either in potential breeding pairs or singly to facilities that already have breeding age panda(s). This is further qualified by limiting exports to institutions that cooperate with others in a breeding program. The Service does not believe that this would exclude the possibility of exporting animals that have not bred in China to a United States breeding program, such as AZA's Giant Panda SSP, in which the focus is to research why these pandas have not successfully bred.

Issue: One commenter stated that the Service does not have the authority to implement Notification No. 932 and the proposed policy itself can only be implemented and enforced as a formal Service regulation adopted after rulemaking procedures.

Response: The Service has discretion to formulate policy that defines or clarifies how to interpret or implement already existing regulations, in this case 50 CFR Parts 13, 17, and 23 for a particular species.

Issue: One commenter stated they were very concerned by the negative impact this policy has had on commercial entities in their desire to help panda conservation through long term breeding loans that would result in *in-situ* financial contributions and captive breeding research in the United States.

Response: The Service recognizes that commercial institutions can potentially make significant contributions toward conservation programs for endangered species. However, in the case of all Appendix-I imports, including giant panda imports, the Service is obligated to determine that the import is not for primarily commercial purposes. Commercial entities must be able to show that they will not economically gain by the import over time, before the Service can approve an import permit. These types of institutions could still contribute financially to panda conservation, without importing the animals, if they chose to do so.

With publication of this policy, the Service lifts the suspension of the review and processing of permit applications to import live giant pandas, which has been in place since December 20, 1993. The policy is effective immediately to allow organizations that have, or are finalizing, loan agreements with China to apply without further delay. Accordingly, we have good cause under 5 U.S.C. 533(d) to waive the 30-day effective date. Applicants should allow at least 120 days for the processing of an application. This time frame includes a notice in the **Federal Register** of the availability of each application for a 30-day public comment period as required under the ESA.

Required Determinations

The information collection requirements identified in this policy as part of the permit application have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0093. OMB has reviewed this document under Executive Order 12866.

The Service has determined that this policy is categorically excluded under Departmental procedures from complying with the National Environmental Policy Act (NEPA) (516 Departmental Manual, Ch. 2, Appx. 1, paragraph 1.10). An Environmental Action Memorandum is on file at the Service's Office of Management Authority in Arlington, Virginia.

Policy on Import of Giant Pandas

Given the long history and controversial nature of the issue of giant panda imports, the Service considers the conservation status of the giant panda sufficiently unique to warrant establishment of a separate policy on the import of giant pandas. The policy sets out guidance that is intended to assist the decision-makers and staff within the Service to carefully review applications for panda import permits, to ensure that all statutory and treaty-based criteria have been addressed and fully explained in the administrative record, and, assuming that these goals are met, to thereby enhance the conservation of the giant panda. The policy does not prescribe new restrictions or limitations but instead sets out a ''road map'' on how to develop and submit a complete application in light of the best scientific information available to the Service at this time.

Before a decision is made on any application for a permit to import or engage in interstate commerce in giant pandas, the Service must review the application in terms of the applicable requirements of CITES and the ESA. Issuance of an import permit under CITES requires prior findings that: (1) The proposed import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant is suitably equipped to house and care for the animals. Issuance of a permit under the ESA requires prior determinations that, among other things: (1) The activity would be for scientific purposes or to enhance the propagation or survival of the species, in a manner consistent with the purposes and policies of the ESA; and (2) issuance of the permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 13.12, 17.22, 23.14, and 23.15. In addition, Section 9(d) of the Lacey Act, with regulations at 50 CFR 14, Subpart J, requires that shipments of live wild mammals being shipped to the United States are done under humane and healthful conditions such that the animals arrive alive, healthy, and uninjured.

This policy provides guidance on Service consideration of these requirements relative to the giant panda only. These considerations and this policy are in no way intended to apply to import permit applications for other species. All such applications must continue to demonstrate that the proposed imports meet the applicable requirements of CITES and the ESA consistent with the conservation status of the particular species in question and the best scientific information available for that species.

Purposes

The primary goal of the policy is to ensure that all permitting decisions involving the transfer of giant pandas into and within the United States contribute toward the survival, and ultimately the recovery of panda populations in the wild. The long term goal is to have all captive-holders of giant pandas cooperate in one international plan. Toward that goal, all transfers should be part of a coordinated panda conservation effort, a term used in this policy to mean an organized effort through which all giant panda movements support high priority projects in China's National Plan, National Survey, or Captive Breeding Plan. If an import or transfer has breeding as one of its purposes, the institution should also coordinate their activities with China's Captive Breeding Plan and must participate in AZA's Giant Panda SSP or a similar plan approved by the Service, as required generally under existing regulations. The Service anticipates that most permit applications will be for multiple purposes. Applicants must identify the primary purpose for the proposed import or interstate transfer and all other intended purposes. No activities for additional purposes should be undertaken after issuance of a permit without prior approval from the Service since issuance of the permit would be based on the purposes identified in the initial application.

The ultimate objective of managing captive pandas should be for research or research/breeding purposes, and any training or use of pandas in animal acts would detract from this objective. Therefore, use of pandas in animal acts or shows most likely would not meet the current permit issuance criteria in the regulations and is discouraged under this policy.

Wild-Taken Pandas

The following criteria would be used when evaluating import applications involving pandas removed from the wild. These temporal criteria are based on information available to the Service suggesting that the removal of pandas from the wild has increasingly come under Chinese control, starting prior to the WWF Plan of August 1989.

In all cases, the Service continues its policy of approving import permit applications only when it is sure that the import did not, or will not, contribute to the removal of pandas from the wild.

1. For wild-taken pandas, those removed from the wild prior to December 31, 1996, would be considered eligible for inclusion in an import permit.

2. Pandas removed from the wild after December 31, 1996, are not likely to be eligible for inclusion in an import permit, in part because the MOC/CBSG Workshop report states that no additional wild-caught pandas are needed to have a self-sustaining captive population.

No Detriment Finding Under CITES

Under CITES Article III.3(a), the import of any specimen of a species included in Appendix I requires a finding by the country of import that the import will be for purposes that are not detrimental to the survival of the species. This finding must be made within the context of the fundamental principle that trade in specimens of Appendix-I species must only be authorized in exceptional circumstances. This finding is made on a case-by-case basis, and is governed by the best available scientific information and the status of the species involved, both in captivity and the wild. The finding also considers whether the intended purposes cannot be achieved by other means (better alternative uses for the animals). Relative to imports of giant pandas, this finding will focus on ensuring that an import will not adversely affect wild populations by directly or indirectly causing the removal of animals from the wild either for the specific import under consideration or by creating a perception that additional imports will be authorized. The finding will also consider the purpose for import to ensure that it contributes to improving the conservation status of the species.

Age and Other Parameters of Animals Available for Importation

1. The Service will consider the age of the pandas and how it relates to accomplishing the proposed activities.

2. The Service also will consider how each specific panda relates to accomplishing the proposed activities and how it was selected to ensure the import will not interfere with China's research and breeding programs.

3. Except in an emergency situation where there is no reasonable alternative medical care available, an infirm animal will not be allowed to be imported unless transport will not further compromise the health of the panda or interfere with the purposes of the import.

Humane Shipment and Transport

Any giant panda shipped to the United States must comply with the regulations in 50 CFR Part 14, Subpart J: Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States. Shipments of pandas by air must meet the International Air Transport Association's Live Animal Regulations. The Service will evaluate proposed shipping containers to ensure that live pandas shipped to the United States arrive alive, healthy, and uninjured and that transportation occurs under humane and healthful conditions.

Length of Loans

In situations where the movement of the panda is part of a loan agreement, the Service will evaluate the length of time requested for the loan to ensure it is appropriate to the proposed activity. The length of the loan should be of sufficient duration to accomplish the stated goals. It is anticipated that such activities may require 3 to 5 years, or longer, to produce research results for the maximum benefit for captive-breeding activities or to produce research results that benefit captive and wild populations

Section 7 Consultation Under the ESA: No Jeopardy Finding

Under section 7 of the ESA, the Service is required to insure that its permit action to allow import, export, and interstate or foreign commerce involving giant pandas is not likely to jeopardize the continued existence of that species. The Service will conduct consultation which will conclude with issuance of a biological opinion stating whether the proposed action is or is not likely to jeopardize the continued existence of the giant panda. A biological opinion will be prepared for each permit application.

Each biological opinion will include a description of the proposed action and take into consideration the status of the giant panda in China, the status of the giant panda in captivity (domestic and international), the effects of the action, and the cumulative effects of the action. If it is determined that the proposed action is likely to jeopardize giant pandas, reasonable and prudent alternatives would be recommended to avoid jeopardy. In the event no reasonable and prudent alternatives are available, the Service will not issue the permit.

If a specific biological opinion concludes the proposed permit is not likely to jeopardize giant pandas, an incidental take statement will be provided to address the anticipated incidental take, if any, that would result from the permit issuance. In addition, the incidental take statement would include terms and conditions to

minimize the impact of incidental take. Such terms and conditions would also be incorporated into the ESA permit.

Enhancement and Conservation Benefits of Specific Projects

Enhancement of the propagation or survival of a species and conservation benefits for scientific research under the ESA can be achieved through the following: (1) The proposed activities must ultimately benefit pandas in the wild, and (2) all funds should be used for giant panda conservation including habitat protection or captive breeding efforts, with a significant portion of all funds being used for *in-situ* conservation projects for the giant panda. Both of these elements should be met to address the conservation/enhancement finding.

1. Whenever funding (import or loan agreement, fundraising money, and net profits) is associated with the import or transfer of giant pandas, the following should be addressed:

(a) Conservation projects to be funded should address the following:

- They should be included in China's National Plan, National Survey, or Captive Breeding Plan and should be formally approved by China's Project Office of MOF, MOC, or other appropriate entity.
- They should be considered a high priority in the most recent Plan.
- They should be described as specifically as possible, with funding allocations to specific tasks given in foreign currency (*e.g.*, yuan) and in U.S. dollars, and projected timeframes given for use of the funds to initiate and complete specific projects or activities.
- Conservation projects that do not meet the above criteria will be considered by the Service, if compelling reasons are given.
- Any change in conservation projects to be funded once a permit is granted would be considered an amendment and would need prior approval of the Service.

(b) The applicant should provide a plan to monitor the disbursement of funds for selected conservation projects or activities. The plan needs to be sufficiently complete so that the Service is satisfied of its effectiveness and is assured the projects will be completed. Such a monitoring plan should include provisions equivalent to the following:

- Before funds are transferred to the appropriate office in China or the lending entity, the permittee and the appropriate foreign entity should agree on a detailed budget, work plan, and timetable for project completion. Specific, measurable objectives and a schedule for progress reports should be identified for each project.
- Payments should be made in installments. Each payment needs to be linked to actions taken toward completion of the project(s).
- Subsequent payments should be contingent on approval of progress reports by the permittee.
- An assessment should be conducted annually to verify progress toward project implementation.
- The permittee should have permission from the Chinese implementing agency or lending entity for the permittee, an authorized representative, and the Service to examine records and to make site visits to funded projects at least annually if needed.

(c) Funds (import or loan agreement money, fund raising money, and net profits) associated with the import/transfer of giant pandas should be allocated for panda conservation as follows (see Primarily Commercial Purposes for additional discussion of net profits):

- A significant portion of the funds should be used for *in-situ* conservation projects for the giant panda and its habitat in China as listed in China's National Plan, National Survey, or Captive Breeding Plan.
- The remaining funds should be used to support panda conservation including breeding or educational efforts for the giant panda in China or additional *in-situ* projects or, if the panda originated in a country outside of China, panda conservation projects outside of China.
- In the event that funds generated exceed the ability of the Chinese to apply the monies to priority projects or captive breeding in China at any one time, then funds may be used to support breeding efforts for the giant panda outside China.
- The allocation of funds for other uses than outlined above will be considered by the Service if compelling reasons are given.
- Any change in allocation of funds once a permit is granted would be considered an amendment and would need prior approval of the Service.

2. If neither the payment of money nor the generation of revenue are associated with the import or transfer of live pandas, the applicant should provide information to the Service to show convincingly that the results of the proposed activities will contribute significantly to the conservation of the panda in the wild.

3. Annual reports to the Service will be required, which should give an accounting and report of funds transferred and portions of the conservation project completed (see Primarily Commercial Purposes for further reporting requirements). Copies of reports received by the applicant from the recipient of funding should be included, with English translations if reports are not in English.

The policy considerations concerning the enhancement and conservation benefits in this Section and in the related sections on the types of activities for which a permit can be issued—Scientific Research, Biological/Scientific Samples, Captive Breeding, and Exhibition—would be used by the Service relative to the giant panda only. These considerations and this policy are in no way intended to apply to import permit applications for other species. All such applications must continue to demonstrate that the proposed imports meet the applicable requirements of the ESA and CITES consistent with the conservation status of the particular species in question and the best scientific information available for that species.

Scientific Research

One of the purposes of the ESA is to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. The ESA defines ''conservation'' as the use of all methods and procedures which are necessary to bring an endangered or threatened species to the point it no longer needs to be protected by the ESA. There is a great need for scientific research on the giant panda, both in the wild and in captivity to help achieve this goal. If permits are issued for imports of live animals for a combination of research and captive breeding, the proposed research must contribute to panda conservation but may be more focused on captive populations.

1. The applicant must provide information to show that the research is *bona fide*, meaning research that is properly designed using the scientific method, and can be accomplished with the expertise and resources available. This should include:

- Objectives and goals should be clearly defined in the research protocol. Hypotheses and experimental designs intended to test them should be described. Any subsequent substantive procedural changes and/or additions must be pre-approved by the Service. The Service will review changes in a timely manner so as not to disrupt the research as applicable.
- Investigative procedures and research protocols should be described in detail or referenced as published in

a recognized refereed, peer-review journal.

- Estimated time frames need to be given.
- Research should not be duplicative unless it is a collaborative effort, or if repetition can be justified.
- The results of the research would be expected to identify, evaluate, or resolve panda conservation problems or contribute to the basic knowledge of panda biology and ecology deemed important to the survival of the panda.
- The research results would likely be published in a recognized refereed, peer-reviewed scientific journal.

2. The applicant must have the expertise and resources to accomplish the stated objectives of the proposed research, and describe how the research would not conflict in any way directly or indirectly with known conservation programs for that species. For research with live pandas:

- Research should be recognized as a high priority activity in China's National Plan, National Survey, or Captive Breeding Plan.
- The proposal should describe how the study may contribute to the conservation of the giant panda in the wild. If portions of the research are *in-situ*, the research must be a collaborative effort with Chinese scientists. For any *ex-situ* portion of the research, the applicant should describe why it is best conducted outside China, and how any information gained or methodologies developed will be transferred for use in China, including estimated time frames of transfers, training, or collaborative efforts.
- Any physically invasive procedures to be used or any behavioral modifications anticipated as part of research activities should be described.
- The permittee must provide an annual report summarizing research activities associated with the purposes of the permit, including a brief description of each project, a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results and copies of published papers resulting from the research. The report must also indicate whether the research resulted in the development of protocols or other methodologies, if the products were transferred to the Chinese government, and how they have been or will be used for giant panda conservation.

3. If live pandas are going to be on exhibition at any time during the term of the research project, the following should be addressed:

- The applicant should provide protocols outlining how the research and exhibition will be monitored to ensure that having the pandas on exhibit is not interfering with the research or biasing data. In lieu of submitting the protocol, the applicant may cite the protocols of the AZA Giant Panda SSP or other relevant breeding plan.
- The applicant must have adequate facilities to conduct the research and provide information on alternative facilities to house the pandas away from public exhibition in case it is found that exhibition interferes with the research. The off-exhibit space, in addition, should be large enough to provide an adequate exercise area should panda(s) need to be housed there on a long term basis.

Biological/Scientific Samples

Permits for import of panda biological samples can be issued for scientific research (including, but not limited to, genetic research, monitoring of health status and diagnosis of disease or other pathological conditions, physiological and behavioral research, assessment of contaminant loads, and gene banking).

For research involving biological samples, the applicant should have the expertise and resources to accomplish the stated objectives:

- Salvaged specimens (*i.e.*, those obtained from animals that have died of natural causes; naturally shed hair; deposited scent gland secretions) should be obtained without harassing any live animals, and collection must be authorized by the MOF, MOC, or the Project Office or the owner of the panda if not owned by China.
- Any invasive sampling or sample collection involving restraint of the animals should be done by qualified personnel (as determined by the applicant), preferably veterinarians, with appropriate training and experience in capture, restraint, and sample collection, so as not to result in death or injury of animals. Collection of samples, including semen specimens, that involve the use of general anesthesia generally may be imported if collected by individuals who possess appropriate expertise in anesthesia of giant pandas so that risk to the animals is minimized, and in the case of semen, persons collecting specimens should also possess appropriate expertise in electro-ejaculation techniques for giant pandas. Invasive sampling or sample collection involving restraint of wild pandas, including semen collection, is limited generally to situations resulting from capture activities conducted for another purpose approved by MOF authorities and should not involve any type of remuneration for the collection of the samples. Animals should not be captured for the sole purpose of collecting samples.
- The results of research conducted with imported specimens must be reported to the Service at least annually; a report should include copies of any scientific publications produced. The report should contain information on the number and type (e.g., blood, hair, skin biopsy) of samples imported, specific source/location from which each sample was collected (if more than one was authorized), and brief observations on the effects of sampling on the animals. The report should also indicate whether the research resulted in the development of protocols or other methodologies, if the products were transferred to the Chinese government, and how they have been or will be used for giant panda conservation.
- Permits to import samples to monitor or determine reproductive status or to import semen for use in captive breeding may be issued. Imports of semen from China should be coordinated with China's Captive Breeding Plan, the AZA Giant Panda SSP, or other coordinated panda conservation plan approved by the Service. Imports of semen from countries other than China must also be done in accordance AZA's Giant Panda SSP (or other plan) but may not require specific written approval from China.
- The import or export of urine, feces, and synthetic DNA, when collected in a manner that does not involve the capture, detention, or killing of protected wildlife, does not require a permit from the Service. The CITES Management Authority of any exporting or importing country should be contacted to meet any requirements it may have.

Captive Breeding

Any captive breeding conducted with imported pandas needs to benefit panda conservation by supplementing the breeding program in China to achieve a self-sustaining captive population (as outlined in the MOC/CBSG Workshop report), and typically provide a source of funds for panda conservation in the wild. There may be a need to maximize the use of pandas currently held in captivity that are not essential to China's Captive Breeding Plan. The Service expects that most of the pandas made available for import into the United States will be ones that have not successfully bred in China. Thus, at this time, the Service finds that captive breeding for the sole purpose of producing offspring is not sufficient to satisfy the enhancement requirement of the ESA. This policy therefore stresses the need for any permit applications

involving captive breeding to include a research component that will benefit panda conservation.

1. If the applicant intends to conduct captive breeding of imported pandas, in addition to the research requirements, the applicant should provide sufficient information to demonstrate the necessity of importing pandas for captive breeding:

- Enhancement may be partially satisfied through captive breeding if it can be convincingly shown that results will be used to study and/or manage giant pandas in a way that contributes to panda conservation. The application or request will be expected to include a research component aimed at increasing reproductive success especially if the animals involved have a history of being non-breeding animals. It is expected that requests to import live giant pandas for captive breeding will also include other enhancement activities, such as the generation of funds for panda conservation in the wild.
- The proposed captive breeding should be part of a coordinated panda conservation effort designed to complement conservation efforts for the wild panda population and the applicant must actively participate in the AZA's Giant Panda SSP or a similar plan approved by the Service.
- The captive breeding program should coordinate with China's Captive Breeding Plan and should demonstrate how it will contribute to the preservation of the panda's gene pool (*i.e.*, retention of maximum genetic diversity). The choice of individuals to be imported should be based on scientific management of the captive populations with genetic and demographic criteria used to determine mating pairs.
- Applications for panda movements should describe how the study would contribute to the conservation of the giant panda in the wild or in captivity, and how any information gained or methodologies developed will be for use in China, including estimated time frames of transfers, training, or collaborative efforts.

2. The applicant should provide information to show that he/she has the expertise and resources to accomplish the stated objectives:

- The applicant should submit a detailed breeding protocol that outlines when male and females will be paired for breeding, how females and males will be visually and physically separated and/or managed together, with layout of facilities and protocols for rearing potential young. In lieu of submitting the protocol, the applicant could show they are using the protocol of the AZA Giant Panda SSP. However, the Service will still request submission of facility and exhibit information in the form of photographs, diagrams and written description with each application.
- Artificial insemination or any other physically invasive procedures should be described, and any subsequent substantive procedural changes and/or additions must be pre-approved by the Service.
- The permittee must provide quarterly updates and an annual report summarizing breeding and research activities, including a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results, and copies of any published papers. The report should also indicate whether the activities resulted in the development of protocols or other methodologies, if such products were transferred to the Chinese government, and how they have been or will be used for giant panda conservation.

3. If pandas are going to be on exhibition at any time during the captive-breeding loan:

- The applicant should provide protocols outlining how the captive breeding, its research component, and exhibition will be monitored to ensure that having the pandas on exhibit does not interfere with captive breeding and/or its research component.
- The applicant must have adequate facilities to conduct the captive breeding and its research and provide information on alternative facilities to house the pandas away from public exhibition in case it is found that the exhibition interferes with the captive breeding or research. The off-exhibit area should provide sufficient space for exercise should pandas need to be housed there long term.
- The applicant must consent to the movement, substitution, or transfer of any panda to another approved institution if, in the judgment and at the request of the Chinese government or the SSP Panda Coordinator, such action is needed to maximize successful captive-breeding opportunities.

Exhibition

1. The import of giant pandas for the sole purpose of educational exhibition would not be sufficient to satisfy enhancement requirements. The Service expects institutions importing giant pandas to educate the U.S. public about the ecological role and conservation needs of the giant panda, but will not consider this as an adequate justification for issuing a permit. However, if an applicant is developing a panda conservation education program that would be transferable to the Chinese government, or is developing a program specifically for use in China, particularly in localities near giant panda habitat and reserves, the Service will consider this project as part of a coordinated conservation effort in making its enhancement finding.

- Educational programs in China should be aimed at local people, school children, panda researchers (field and captive), reserve biologists, and managers and should be in conjunction with the full cooperation of the Chinese authorities.
- Educational activities or projects should be described in detail, including samples of the kinds of educational materials to be used and a description of evaluation methods.
- The messages conveyed through the educational program should stress historical and contemporary impacts on the status of the giant panda in the wild and conservation efforts that might be required to halt the species' decline and degradation of its habitat.

2. Educational displays would only be allowed as an ancillary component of a research or research/captive-breeding program. However, if an applicant intends to exhibit the panda(s), educational display(s) should be developed and implemented to educate the U.S. public about the ecological role and conservation needs of the giant panda. Specifically, the import of pandas solely for exhibition loans is discouraged.

Primarily Commercial Purposes

With regard to the determination of whether an import of giant pandas is not to be used for primarily commercial purposes, the Service will utilize the following policy.

1. Resolution Conf. 5.10 of the Conference of Parties to CITES provides that:

- The nature of the transfer of specimens between the owner in the country of export and the recipient in the country of import may be commercial. It is the intended use of the specimens in the country of import that must not be for primarily commercial purposes, and it is the responsibility of the recipient country's Management Authority to make this determination.
- There may be some commercial aspects of that use, but the non-commercial uses must predominate in order to be deemed primarily non-commercial.

2. Any public, private, non-profit, or commercial (profit-making) institutions, organizations, and agencies will receive consideration for applications for the

importation of pandas. The Service's general regulations at 50 CFR 10.12 define ''public'' institutions as those that ''* * * are open to the general public and are either established, maintained, and operated as a government service, or are privately endowed and organized but not operated for profit.'' Although commercial organizations may also choose to apply for an import permit, the orientation of such organizations to carry out transactions in the pursuit of gain or profit would make it more difficult for the Service to find that the specimen proposed for import is not to be used primarily for commercial purposes. As in all cases, the burden rests with the applicant to show that this CITES requirement is satisfied.

3. The Service's policy is that all net profits should be used for panda conservation in China, with a significant portion of such funds being used for *in-situ* conservation (see Enhancement and Conservation Benefits of Specific Projects). Net profits include all funds or other valuable considerations (including enhanced value of common stock shares) received or attained by an institution or related organization (including any commercial parent organization of the applicant, but not including unrelated private entities, such as hotels, not associated with the applicant) as a result of the panda import, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activities (*e.g.*, exhibition).

- Reasonable expenses would include, but are not limited to, the following: Facility construction if amortized for the entire proposed length of stay for the imported animal(s); cost of the importation agreement; facility maintenance; and direct labor and operating expenses and supplies needed for the care of the pandas and necessary to conduct research or research/captive-breeding activities that have been identified in the application.
- In making decisions on panda import permit applications, the Service's goal would be to maximize funds going back to conservation projects in China and, as such, costs associated with ordinary operations, such as advertising, general personnel costs, general legal expenses (not directly related to the panda import), would not be considered reasonable expenses unless they can be shown to be necessary to sustain the conservation purpose of the import.
- Collection of revenues generated by import of the panda by the importing institution (*e.g.*, gate receipts, food and drink sales, tourist souvenirs), either for its own use or for the use of other organizations, for purposes other than those previously described ordinarily would be judged to be a primarily commercial activity, as would the use of revenues for profit-making purposes.
- Monitoring of visitation and other means of tracking monies earned as a result of panda activities should be employed by the institution to assist in gathering data used to calculate net profits.

4. Each applicant for a panda import, in satisfying the applicable requirements of 50 CFR subchapter B, must submit a detailed plan for the allocation of all funds raised in excess of expenses (net profits), as a result of the panda import. The application should also include a statement from a licensed, independent certified public accountant stating that the applicant's internal accounting system is sufficient to account for and track funds generated directly by the panda import, and for the subsequent disbursement of funds.

5. Each recipient of a permit to import pandas is required, in accordance with 50 CFR 13.45, to submit an annual report to the Service as a condition of the permit. The annual report must contain a full accounting of all funds raised directly by the institution or related organization, the reasonable expenses incurred and the portion of the funds raised that is in excess of these expenses, and what portion of these funds are to be disbursed for giant panda conservation projects or activities as outlined in the prior section, Enhancement and Conservation Benefits of Specific Projects. A description of the method used to calculate net profits and categories of expenses and revenues (including enhanced stock value, if applicable) must also be included in the report.

- The report should include names of people involved, location of the activities, a brief description of each project and assessment of project implementation, and the amount and use of money being provided the project.
- Conservation projects other than those projects presented in the application must receive approval from the Service prior to allocating funds.
- If applicants wish to protect the specific dollar amounts submitted in their annual report from disclosure under the Freedom of Information Act, they should indicate this in the report along with a reasonable justification to withhold confidential business information.

These policy considerations would be used by the Service only for determining whether panda imports are primarily commercial in nature. They are not intended to apply to Appendix-I import permit applications for other species. All such applications must continue to demonstrate that the proposed import meets the general requirements of CITES Article III to satisfy the ''not to be used for primarily commercial purposes'' test.

Suitability of Facilities and Care

Under CITES, the Service must be ''satisfied that the proposed recipient of a living specimen (to be imported) is suitably equipped to house and care for it.'' Under the regulations implementing the ESA, the Service must determine that the applicant has ''* * * The expertise, facilities, or other resources * * * to successfully accomplish the objectives * * *'' To aid in satisfying these requirements, applicants should provide the following information in addition to the information required in 50 CFR 17.22:

- Copies of protocols for monitoring general health and behavior. In lieu of new protocols, an applicant may submit copies of protocols recommended by a coordinated panda conservation effort, including the AZA Giant Panda SSP.
- Diagrams and photographs clearly depicting all enclosures where the panda may be housed, including any off-exhibit areas and panda holding area(s) in relation to other facilities.
- Information to demonstrate the applicant has adequately consulted with other facilities that have successfully held pandas in recent years, that the applicant has facility features that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers and veterinarians, have had proper training and experience to care for pandas.
- Approval of facilities by the Chinese or appropriate authority in the lending country, if such a stipulation has been made in a contractual agreement.

Transfer of Pandas to Other Entities Within the United States

Transfer of pandas already in the United States may be allowed as part of a scientific research or research/captive-breeding program but should address all of the considerations noted in this policy. Pandas may be displayed as long as it does not interfere with breeding or research. The proposed recipient of the panda transferred between states will need to apply for and receive an interstate commerce permit under the ESA prior to the transfer since the recipient would potentially gain

financially by having pandas at their facility and/or are being held under a loan (*e.g.*, lease-hold agreement) from China or other lending entity. The proposed recipient of the panda will need to provide all the information required by the ESA, its regulations, and this policy in order for the Service to make its findings prior to issuance of a permit. The Service will facilitate, to the extent possible, the transfer of animals within the United States when it is part of a coordinated research or research/breeding program. If the receiving institution has a panda permit on file with the Service, it can reference the permit number and information in this file, and provide any new information for the Service to review in consideration of an interstate commerce permit. Because applications will be published in the **Federal Register**, the applicant will need to allow at least 90 days for processing. Since transfers must also have the prior approval of the Chinese government or the entity that owns the animals, a permittee must have prior approval of the Service to transfer pandas within a state, and the proposed recipient should address all of the considerations noted in this policy. The number of times an individual panda is transferred within the United States will be closely monitored by the Service to protect the overall health and well-being of the animal.

This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 22, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–23074 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01; NDM 86601]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of coal lease offering by sealed bid: NDM 86601—Knife River Corporation.

U.S. Department of the Interior, Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Notice is hereby given that the coal resources in the lands described below in Mercer County, North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Knife River Corporation, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearing have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered consists of all recoverable reserves in the following-described lands located approximately 2.5 miles south of the town of Beulah, North Dakota:

T. 143 N., R. 88 E., 5th P.M.,
Sec. 24: NW¼NW¼, S½NW¼, SW¼, S½SE¼.

Containing 360 acres, Mercer County, North Dakota.

There are three principal minable coal seams in the tract. They are the School House, Upper Beulah-Zap, and Lower Beulah-Zap. The tract contains an estimated 6.21 million tons of recoverable reserves.

The School House seam averages 5.8 feet in thickness. Coal quality, as received, averages 6,643 BTU/lb., 36.66 percent moisture, 10.43 percent ash, and 1.24 percent sulfur.

The Upper Beulah-Zap seam averages 10.9 feet in thickness. Coal quality, as received, averages 6,776 BTU/lb., 38.52 percent moisture, 5.94 percent ash, and 0.49 percent sulfur.

The Lower Beulah-Zap seam averages 3.5 feet in thickness. Coal quality, as received, averages 6,717 BTU/lb., 38.27 percent moisture, 7.32 percent ash, and 0.76 percent sulfur.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of the coal mined by surface methods and 8.0 percent of the value of the coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Date: The lease sale will be held at 10 a.m., Wednesday, September 30, 1998, in Side B of the Conference Room on the Sixth Floor of the Granite Tower Building at the above address.

Sealed Bids: Sealed bids must be submitted on or before 9 a.m., Wednesday, September 30, 1998, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTAL INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: August 20, 1998.

John E. Moorhouse,

Acting State Director.

[FR Doc. 98–22974 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–08–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on October 1 and 2, 1998 at the Amberley Suites Hotel, 7620 Pan American NE, Albuquerque, NM 87109.

The meeting on Thursday October 1 starts at 8:30 a.m., and the meeting on Friday October 2 starts at 8:00 a.m. The agenda for the RAC meeting includes agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting on July 30 and 31, 1998 in Taos, NM., BLM Field Office Managers presentations,

Watershed presentation and discussion, presentation and discussion on Standard and Guidelines EIS, DEIS hearings, and allotment assessment process, select next meeting location, dates and develop draft agenda items, RAC assessment of the meeting and a presentation and discussion on McGregor Range DEIS and other items as appropriate. The RAC meetings is open to the public.

The time for the public to address the RAC is on the Thursday, October 1, 1998, from 3:00 p.m. to 5:00 p.m. The RAC may reduce or extend the end time of 5:00 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items. The meeting on October 2, 1998, will be from 8:00 a.m. to 4:00 p.m. The end time of 4:00 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: August 21, 1998.

M.J. Chávez,

State Director.

[FR Doc. 98–22972 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–08–1310–00–241A; MSES 48204]

Mississippi; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease MSES 48204, Greene County, Mississippi, was timely filed and accompanied by all required rentals and royalties accruing from December 1, 1997, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent. Payment of $500 in administrative fees and a $125 publication fee has been made.

The Bureau of Land Management is proposing to reinstate the lease effective December 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)).

FOR FURTHER INFORMATION CONTACT: Gina Goodwin at (703) 440–1534.

Dated: August 19, 1998.

Gwen W. Mason,

Associate State Director.

[FR Doc. 98–23043 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1430–01; CACA 28617]

Termination of Classification of Public Land for Recreation and Public Purposes and Opening Order; California

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates, in its entirety, the classification, dated March 15, 1994, which classified public land for lease for recreation and public purposes pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.). The land will be opened to the operation of the public land laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land has been and remains open to the operation of the mineral leasing laws.

EFFECTIVE DATE: August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Rosalinda Estrada, BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308; telephone number (805) 391–6126.

SUPPLEMENTARY INFORMATION: On March 15, 1994, the lands described below were classified as suitable for lease pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4) and the land was segregated from appropriation under the public land laws and the general mining laws:

All that land located in Section 7 encompassing a portion of Lots 7 and 10, and a portion of NW¼NW¼NE¼NW¼, Township 27 South, Range 33 East, M.D.M., Kern County, California, described as follows:

Beginning at the BLM BC marked for the West 1/16 corner of Sections 6 and 7 of said Township 27 South, said BLM BC also being the POINT OF BEGINNING, thence the following nine courses:

1. North 89°41′00″ East along the North line of said Section 7 39.33 feet;
2. South 03°05′49″ East 193.16 feet;
3. South 73°47′28″ West 215.26 feet;
4. South 70°08′42″ West 48.36 feet;
5. South 53°39′35″ West 60.09 feet;
6. South 49°07′04″ West 92.21 feet;
7. North 01°02′08″ West 32.75 feet to a BLM BC property corner;
8. Continuing North 01°02′08″ West 330.63 feet to the North line of said Section 7 and a BLM BC;
9. North 89°41′00″ East 327.12 feet to the POINT OF BEGINNING.

Kern County, California

Containing Approximately 2.18 acres a portion of AP #348–060–03.

By letter dated December 28, 1994, the Kern County Sheriff's Search and Rescue voluntarily withdrew their application submitted August 15, 1991 for Recreation and Public Purposes lease of the above described public lands.

Purpose to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and the regulations contained in 43 CFR 2091.7–1(b)(1)(iii), the classification, dated March 15, 1994, which classified the above described public land for lease for recreation and public purposes, is hereby terminated in its entirety.

At 10 a.m. on August 27, 1998, the public land, as described above, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on August 27, 1998 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on August 27, 1998, the public land, as described above, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of

the land described in this notice under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: July 10, 1998.

Ron Fellows,

Field Office Manager.

[FR Doc. 98–19383 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–00; F–030972]

Public Land Order No. 7357; Partial Revocation of Air Navigation Site No. 140; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects approximately 30.15 acres of public land withdrawn for Air Navigation Site No. 140 at Petersville, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated April 17, 1940, as amended, which withdrew public land for Air Navigation Site No. 140, is hereby revoked insofar as it affects the following described land:

Seward Meridian

A parcel of land located within T. 28 N., R. 8 W., more particularly described as: Beginning at Corner No. 1, approximate latitude 62°29′ N., longitude 150°48′ W., from which the center of the bridge over the first small creek crossing the Peters Creek Road, approximately 100 feet north of the camp of the Peters Creek Mining Company (locally known as Petersville), in the Talkeetna Recording Precinct, Alaska, bears approximately N. 10°30′ W., 885 feet; Thence from said beginning corner S. 5°45′ W. 3,000 feet to Corner No. 2; Thence N. 84°15′ W. 575.7 feet to Corner No. 3; Thence N. 11°E. 3,012.6 feet to Corner No. 4; Thence S. 84°15′ E. 300 feet to Corner No. 1, the place of beginning.

The area described contains approximately 30.15 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Any land not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

Dated: August 13, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23055 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01; AZA 30707]

Public Land Order No. 7356; Revocation of Public Land Order No. 776; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order which withdrew 640 acres of land for Rittenhouse Air Force Auxiliary Field, Williams Air Force Base. The Defense Base Closure and Realignment Act of 1990 closed Williams Air Force Base and its Rittenhouse Auxiliary Field, so the withdrawal is no longer needed. The mineral estate for the entire parcel and the surface estate for 160 acres have been conveyed to the State of Arizona. The surface estate for the remaining 480 acres has been leased to the State of Arizona for use by the Arizona National Guard. This is a record-clearing action only.

EFFECTIVE DATE: August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 776, which withdrew the following described land for Rittenhouse Auxiliary Field, is hereby revoked in its entirety:

Gila and Salt River Meridian

T. 2 S., R. 8 E.,
Sec. 15.

The area described contains 640 acres in Pinal County.

2. Since all of the land has either been leased or conveyed out of Federal ownership and the mineral estate is no longer in Federal ownership, the land will not be opened at this time.

Dated: August 13, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23053 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 40730, MTM 40731, MTM 40733]

Public Land Order No. 7354; Partial Revocation of Secretarial Orders Dated May 21, 1906, May 13, 1907, and February 16, 1909; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes three Secretarial orders insofar as they affect 6.62 acres of public land withdrawn for the Bureau of Reclamation's Lower Yellowstone and Huntley Reclamation Projects and the Huntley Townsite. The land is no longer needed for these purposes and the revocations are needed to permit disposal of the land through direct sale. This action will open the land to surface entry subject to temporary segregations of record. The land is temporarily closed to mining due to the pending sale proposal. The land has been and will remain open to mineral leasing. The minerals are held in trust for the Crow Tribe by the United States in accordance with the Act of August 14, 1958 (72 Stat. 575).

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated May 21, 1906, May 13, 1907, and February 16, 1909, which withdrew public land for the Bureau of Reclamation's Lower Yellowstone and Huntley Reclamation Projects and Huntley Townsite, are hereby revoked insofar as they affect the following-described land:

Principal Meridian, Montana

T. 2 N., R. 27 E.,
Secs. 24 and 25, alleys in blocks 15, 16, 18, and 20; Beech Street between blocks 16 and 18; Cane Street between blocks 14 and 15; Cane Street between blocks 18 and 20; First Street North situated between blocks 16, 18, and 20 on the north and blocks 14 and 15 on the south; Second Street North situated between blocks 17, 19, and 21 on the north and blocks 16, 18, and 20 on the south.
Sec. 25, lot 47, block 9.

The area described contains 6.62 acres in Huntley Townsite, Yellowstone County.

2. At 9 a.m. on September 28, 1998, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 28, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. All mineral interests in the above-described land are owned by the United States in trust for the Crow Tribe, and shall be leased or otherwise disposed of under the laws and regulations relating to Indian trust lands as provided by the Act of August 14, 1958 (72 Stat. 575).

Dated: August 13, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23052 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OK–040–1430–01; OKNM 82774]

Public Land Order No. 7359; Transfer of Jurisdiction; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers the administrative jurisdiction of 391.27 acres of land withdrawn for use by the military at Fort Sill, Oklahoma from the United States Department of the Army to the United States Department of Veterans Affairs for the construction and operation of a national cemetery. This transfer of jurisdiction is directed by the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201).

EFFECTIVE DATE: August 27, 1998.

FOR FURTHER INFORMATION CONTACT: John Ledbetter, BLM Moore Field Office, 221 North Service Road, Moore, Oklahoma 73160–4946, (405) 794–9624.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and in accordance with Section 2822 of Public Law 104–201, it is ordered as follows:

1. Subject to valid existing rights, the administrative jurisdiction of the following described public land is hereby transferred to the Department of Veterans Affairs for the construction and operation of a national cemetery:

Indian Meridian

T. 3 N., R. 11 W.

A tract of land located in sec. 2 and sec. 3, being more particularly described as follows:

Beginning at the northwest corner of sec. 3 as the point of beginning, thence S. 89°38′12″ E., along the north boundary of sec. 3 a distance of 5,260.09 ft., to the northeast corner of sec. 3, said point also being the northwest corner of sec. 2, thence S. 89°52′27″ E., along the north boundary of sec. 2 a distance of 2,308.55 ft. to a point on the northwest right-of-way of the H.E. Bailey Turnpike or Interstate 44, thence S. 63°29′39″ W., along the northwest right-of-way of H.E. Bailey Turnpike or Interstate 44 a distance of 1,138.77 ft. to a point, thence southwesterly along a curve to the left, having a radius of 28,797.89 ft., a distance of 1,465.98 ft., said curve being subtended by a chord 1,465.82 ft. long bearing S. 62°03′28″ W., to a point of intersection with the west line of sec. 2 and the northwest right-of-way of H.E. Bailey Turnpike or Interstate 44, said point being located 1,200.15 ft. S. 00°15′39″ W., of the northwest corner of sec. 2, thence continuing southwesterly along said northwest right-of-way on a curve to the left, having a radius of 28,797.89 ft., a distance of 4,692.75 ft., said curve being subtended by a chord 4,687.56 ft. long bearing S. 55°55′52″ W., to a point, thence continuing along northwest right-of-way S. 51°14′54″ W. a distance of 1,828.77 ft. to the west boundary of sec. 3, said point being located 194.05 ft. N. 00°37′34″ E., of the southwest corner of sec. 3; thence N. 00°37′34″ E., a distance of 5,004.43 ft. to the point of beginning, containing 391.27 acres, more or less, which includes a 33.00 ft. wide statutory roadway right-of-way along west property line.

The area described contains 391.27 acres in Comanche County.

2. Future use of the land shall be in accordance with and subject to the provisions of Section 2822 of Public Law 104–201.

Dated: August 13, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23045 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(OR–958–1430–01; GP7–0133; OR–19181)

Public Land Order No. 7360; Revocation of Geological Survey Order Dated August 15, 1947; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Geological Survey order in its entirety as to the remaining 5,289.12 acres of lands withdrawn for Bureau of Land Management Powersite Classification No. 383. The lands are no longer needed for the purpose for which they were withdrawn. This action will open approximately 4,074 acres to surface entry. These lands have been and will remain open to mining and mineral leasing. Of the remaining lands, 1,182.64 acres will remain closed to surface entry by other overlapping withdrawals, and 32.48 acres have been conveyed out of Federal ownership, with a reservation of all minerals to the United States.

EFFECTIVE DATE: November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Geological Survey Order dated August 15, 1947, which established Powersite Classification No. 383, is hereby revoked in its entirety:

Willamette Meridian

(a) Public Lands

T. 6 S., R. 19 E.,
Sec. 17, SE¼SW¼;
Sec. 20, W½NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 31, W½E½.
T. 7 S., R. 19 E.,
Sec. 7, W½E½;
Sec. 17, SW¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 18, W½NE¼;
Sec. 19, lots 2 and 3, SW¼NE¼, E½NW¼, NE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 20, W½NE¼, SW¼SW¼, and SE¼SE¼;
Sec. 28, S½N½, NW¼NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 30, E½E½, SW¼NE¼, and NW¼SE¼;
Sec. 31, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 32, NW¼;
Sec. 33, N½NE¼ and SW¼NW¼;
Sec. 34, N½S½.
T. 8 S., R. 19 E.,
Sec. 3, lot 3, SW¼NE¼, SE¼NW¼, and W½SE¼;
Sec. 4, SE¼SW¼ and SE¼;
Sec. 5, lots 3, 4, and 5, SW¼NE¼, and SE¼NW¼;
Sec. 9, lots 3 and 4, lot 5, (formerly NE¼NE¼), lot 9 (formerly SW¼NE¼), lot 10 (formerly SE¼NE¼), and NE¼SW¼;
Sec. 10, W½NE¼;
Sec. 15, lot 1 and E½SW¼;
Sec. 20, NW¼NE¼;
Sec. 21, lot 1, SE¼NE¼, NE¼NW¼, NE¼SE¼, and SW¼SE¼;
Sec. 22, lots 3 and 4, NE¼SW¼, and SW¼SE¼;
Sec. 23, lot 2, NE¼SW¼, and NW¼SE¼;
Sec. 24, SE¼NW¼ and SW¼;
Sec. 25, NE¼NW¼, SW¼NW¼, and SE¼SW¼;
Sec. 26, lot 1 and lot 5 (formerly part of NE¼NE¼), SW¼NE¼, and NE¼NW¼;
Sec. 27, lot 1.
T. 9 S., R. 19 E.,
Sec. 1, SE¼SE¼;
Sec. 12, NE¼NE¼ and SW¼NW¼;
Sec. 14, NE¼NE¼;
Sec. 24, SE¼NE¼ and NE¼SE¼.
T. 8 S., R. 20 E.,
Sec. 31, SE¼NE¼;
Sec. 32, lots 2 and 4, and SE¼SW¼.
T. 9 S., R. 20 E.,
Sec. 5, SW¼NW¼;
Sec. 6, lots 3 and 5, and SE¼NW¼;
Sec. 30, NW¼SE¼;
Sec. 32, NW¼SW¼.

(b) Non-Federal Surface

T. 8 S., R. 19 E.,
Sec. 26, lot 6.

The areas described aggregate 5,289.12 acres in Jefferson, Wasco, and Wheeler Counties.

2. The land described in paragraph 1(b), has been conveyed out of Federal ownership with a reservation of all minerals to the United States and will not be restored to operation of the public land laws. The land has been and continues to be open to the mining and mineral leasing laws.

3. The lands described as NE¼NE¼ of sec. 33, and N½S½ of sec. 34, T. 7 S., R. 19 E., are included in the John Day Fossil Beds National Monument and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

4. All those lands described in paragraph 1(a), which constitute the bed or the bank, or are within ¼ mile of the bank of the John Day River, are included in the Bureau of Land Management's withdrawal for the John Day Wild and Scenic River, and will remain closed to operation of the public land laws. The lands, except as provided in paragraph 3, have been and continue to be open to location and entry under the mining laws, and to applications and offers under the mineral leasing laws.

5. At 8:30 a.m. on November 27, 1998, the following described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 27, 1998, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Willamette Meridian

All those lands lying outside the Bureau of Land Management's withdrawal boundary for the John Day Wild and Scenic River.

T. 6 S., R. 19 E.,
Sec. 17, SE¼SW¼;
Sec. 20, W½NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 31, W½E½.
T. 7 S., R. 19 E.,
Sec. 7, W½E½;
Sec. 17, SW¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 18, W½NE¼;
Sec. 19, lots 2 and 3, SW¼NE¼, E½NW¼, NE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 20, W½NE¼, SW¼SW¼, and SE¼SE¼;
Sec. 28, S½N½, NW¼NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 30, E½E½, SW¼NE¼, and NW¼SE¼;
Sec. 31, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 32, NW¼;
Sec. 33, NW¼NE¼ and SW¼NW¼.
T. 8 S., R. 19 E.,
Sec. 3, lot 3, SW¼NE¼, SE¼NW¼, and W½SE¼;
Sec. 4, SE¼SW¼ and SE¼;
Sec. 5, lots 3, 4, and 5, SW¼NE¼, and SE¼NW¼;
Sec. 9, lots 3 and 4, lot 5, (formerly NE¼NE¼), lot 9 (formerly SW¼NE¼), lot 10 (formerly SE¼NE¼), and NE¼SW¼;
Sec. 10, W½NE¼;
Sec. 15, lot 1 and E½SW¼;
Sec. 20, NW¼NE¼;
Sec. 21, lot 1, SE¼NE¼, NE¼NW¼, NE¼SE¼, and SW¼SE¼;
Sec. 22, lots 3 and 4, NE¼SW¼, and SW¼SE¼;
Sec. 23, lot 2, NE¼SW¼, and NW¼SE¼;
Sec. 24, SE¼NW¼ and SW¼;
Sec. 25, NE¼NW¼, SW¼NW¼, and SE¼SW¼;
Sec. 26, lots 1 and 5 (formerly part of NE¼NE¼), SW¼NE¼, and NE¼NW¼;
Sec. 27, lot 1.
T. 9 S., R. 19 E.,
Sec. 1, SE¼SE¼;
Sec. 12, NE¼NE¼ and SW¼NW¼;
Sec. 14, NE¼NE¼;
Sec. 24, SE¼NE¼ and NE¼SE¼.
T. 8 S., R. 20 E.,
Sec. 31, SE¼NE¼;
Sec. 32, lots 2 and 4, and SE¼SW¼.
T. 9 S., R. 20 E.,
Sec. 5, SW¼NW¼;
Sec. 6, lots 3 and 5, and SE¼NW¼;
Sec. 30, NW¼SE¼;
Sec. 32, NW¼SW¼.

The areas described aggregate approximately 4,074 acres in Jefferson, Wasco, and Wheeler Counties.

6. The State of Oregon has a preference right, as to the lands referenced in paragraph 5, for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: August 13, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23046 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–990–0777–68; GP8–0146; OR–9041]

Public Land Order No. 7358; Modification and Partial Revocation of Executive Order Dated April 17, 1926; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies an Executive order to establish a 20-year term as to 334.57 acres of public lands

withdrawn for Bureau of Land Management Public Water Reserve No. 107. The lands will remain closed to surface entry and opened to nonmetalliferous mining. This order also revokes the same Executive order insofar as it affects 7,707.04 acres. These lands do not meet the criteria for a public water reserve. This action will open the lands to surface entry and nonmetalliferous mining, unless included in other segregations of record. All of the lands have been and will remain open to metalliferous mining and mineral leasing unless included in other segregations of record.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby modified to expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended insofar as it affects the following described lands:

Willamette Meridian

T. 41 S., R. 14½ E.,
Sec. 1, SW¼NE¼.
T. 36 S., R. 22 E.,
Sec. 7, SE¼SW¼.
T. 30 S., R. 23 E.,
Sec. 25, NW¼SE¼.
T. 32 S., R. 23 E.,
Sec. 14, SE¼NE¼.
T. 40 S., R. 23 E.,
Sec. 28, NW¼SE¼SW¼ and S½SE¼SW¼.
T. 38 S., R. 24 E.,
Sec. 31, SW¼NW¼NE¼;
T. 41 S., R. 24 E.,
Sec. 21, SE¼SE¼ of lot 1;
Sec. 22, SW¼SW¼ of lot 4.
T. 40 S., R. 28 E.,
Sec. 1, E½SE¼SE¼.
T. 40 S., R. 29 E.,
Sec. 6, NW¼ of lot 7 and S½ of lot 7;
Sec. 7, NW¼SW¼NE¼, S½SW¼NE¼, E½SE¼NW¼, N½NW¼SE¼, and SE¼NW¼SE¼.

The areas described aggregate 334.57 acres in Harney, Klamath, and Lake Counties.

The lands described above continue to be withdrawn from settlement, sale, location, or entry under the public land laws, but have been and will remain open to metalliferous mining and leasing under the mineral leasing laws, to protect Public Water Reserve No. 107, unless included in other segregations of record.

2. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

(a) Public Lands
T. 40 S., R. 10 E.,
Sec. 11, S½NW¼.
T. 41 S., R. 14½ E.,
Sec. 1, lots 1 to 4, inclusive, SE¼NE¼, S½NW¼, and S½.
T. 24 S., R. 20 E.,
Sec. 2, W½;
Sec. 3, S½NE¼, S½SW¼, and SE¼;
Sec. 4, W½E½ and SE¼SE¼;
Sec. 9, E½;
Sec. 10, W½E½ and W½.
T. 36 S., R. 22 E.,
Sec. 6, lots 6 and 7;
Sec. 7, lots 3 and 4, and NE¼SW¼.
T. 38 S., R. 22 E.,
Sec. 24, E½SW¼.
T. 40 S., R. 22 E.,
Sec. 13, E½E½.
T. 30 S., R. 23 E.,
Sec. 24, SE¼SE¼.
T. 32 S., R. 23 E.,
Sec. 13, SE¼NW¼ and E½SW¼;
Sec. 14, NE¼NW¼.
T. 38 S., R. 23 E.,
Sec. 34, S½SW¼.
T. 39 S., R. 23 E.,
Sec. 3, lots 2 and 3.
T. 40 S., R. 23 E.,
Sec. 7, lots 3 to 6, inclusive, NE¼SW¼, and N½SE¼;
Sec. 8, W½SW¼;
Sec. 17, W½W½;
Sec. 18, lots 1 to 6, inclusive, SE¼SW¼, and S½SE¼;
Sec. 20, E½NE¼;
Sec. 21, SW¼SW¼;
Sec. 28, SW¼NW¼ and NE¼SE¼SW¼.
T. 35 S., R. 24 E.,
Sec. 9.
T. 38 S., R. 24 E.,
Sec. 29, SW¼SW¼;
Sec. 30, S½SE¼;
Sec. 31, NE¼NE¼, E½NW¼NE¼, NW¼NW¼NE¼, and S½NE¼;
Sec. 32, W½NW¼.
T. 41 S., R. 24 E.,
Sec. 21, N½ of lot 1, SW¼ of lot 1, N½SE¼ of lot 1, SW¼SE¼ of lot 1;
Sec. 22, N½ of lot 4, N½SW¼ of lot 4, SE¼SW¼ of lot 4, SE¼ of lot 4.
T. 35 S., R. 25 E.,
Sec. 23, SW¼NE¼, S½NW¼, and NE¼SW¼.
T. 40 S., R. 25 E.,
Sec. 23, W½SE¼;
Sec. 35, NW¼SW¼.
T. 36 S., R. 26 E.,
Sec. 3, SE¼NE¼ and NE¼SE¼;
Sec. 9, SW¼SW¼;
Sec. 15, N½NW¼ and SW¼NW¼.
T. 38 S., R. 26 E.,
Sec. 11, SW¼SE¼;
Sec. 13, NW¼NW¼, S½NW¼, E½SW¼, and SW¼SE¼;
Sec. 14, N½NE¼;
Sec. 24, NE¼NE¼.
T. 35 S., R. 27 E.,
Sec. 3, SW¼NW¼.
T. 38 S., R. 27 E.,
Sec. 2, SE¼NE¼;
Sec. 19, lots 1 and 2, and E½NW¼.
T. 39 S., R. 27 E.,
Sec. 34, lots 11 to 18, inclusive.
T. 40 S., R. 28 E.,
Sec. 1, SE¼SW¼, N½SE¼, SW¼SE¼, and W½SE¼SE¼;
Sec. 12, NE¼ and NE¼NW¼.
T. 40 S., R. 29 E.,
Sec. 6, lot 6, NE¼ of lot 7, and E½SW¼;
Sec. 7, lots 1 to 4, inclusive, NW¼NE¼, NE¼SW¼NE¼, W½SE¼NW¼, E½SW¼, SW¼NW¼SE¼, and SW¼SE¼;
Sec. 18, lot 1 and NE¼NW¼.
T. 41 S., R. 29 E.,
Sec. 7, SE¼SW¼ and SW¼SE¼.

(b) National Forest System Lands

Fremont National Forest

T. 30 S., R. 14 E.,
Sec. 16, SE¼SW¼ and SW¼SE¼.

The areas described in (a) and (b) aggregate 7,707.04 acres in Harney, Klamath, and Lake Counties.

3. The following described lands will remain closed to surface entry and mining due to an overlapping withdrawal for the Hart Mountain National Antelope Refuge:

Willamette Meridian.

T. 36 S., R. 26 E.,
Sec. 3, SE¼NE¼ and NE¼SE¼;
Sec. 9, SW¼SW¼;
Sec. 15, N½NW¼ and SW¼NW¼.
T. 35 S., R. 27 E.,
Sec. 3, SW¼NW¼.

The areas described aggregate 280 acres in Lake County.

4. The following described lands are included in a Bureau of Land Management withdrawal made by Public Land Order No. 5490, as modified by Public Land Order Nos. 5542 and 7043 for multiple use, and will remain closed to the agricultural land laws:

Willamette Meridian

T. 38 S., R. 22 E.,
Sec. 24, E½SW¼.
T. 41 S., R. 24 E.,
Sec. 21, N½ of lot 1, SW¼ of lot 1, N½SE¼ of lot 1, SW¼SE¼ of lot 1;
Sec. 22, N½ of lot 4, N½SW¼ of lot 4, SE¼SW¼ of lot 4, SE¼ of lot 4.

The areas described aggregate 154.11 acres in Lake County.

5. The following described lands are included in a Bureau of Land Management Wilderness Study Area and will remain closed to mineral leasing and permits:

Willamette Meridian

T. 39 S., R. 23 E.,
Sec. 3, lots 2 and 3.
T. 38 S., R. 24 E.,
Sec. 29, SW¼SW¼;
Sec. 30, S½SE¼;
Sec. 31, NE¼NE¼, E½NW¼NE¼, NW¼NW¼NE¼, and S½NE¼;
Sec. 32, W½NW¼.
T. 38 S., R. 26 E.,
Sec. 11, SW¼SE¼;
Sec. 13, NW¼NW¼, S½NW¼, E½SW¼, and SW¼SE¼;
Sec. 14, N½NE¼;
Sec. 24, NE¼NE¼.
T. 38 S., R. 27 E.,
Sec. 19, lots 1 and 2, and E½NW¼.
T. 40 S., R. 28 E.,
Sec. 1, SE¼SW¼, N½SE¼, SW¼SE¼, and W½SE¼SE¼;
Sec. 12, NE¼ and NE¼NW¼.
T. 40 S., R. 29 E.,
Sec. 6, lot 6, NE¼ of lot 7, and E½SW¼;
Sec. 7, lots 1 to 4, inclusive, NW¼NE¼, NE¼SW¼NE¼, W½SE¼NW¼, E½SW¼, SW¼NW¼SE¼, and SW¼SE¼;
Sec. 18, lot 1 and NE¼NW¼.

The areas described aggregate 1916.90 acres in Harney and Lake Counties.

6. At 8:30 a.m. on September 28, 1998, the lands described in paragraph 2(a), except as provided in paragraphs 3, 4, and 5, will be opened to the operation of the public land laws generally, and the lands referenced in paragraph 4 will be opened to the operation of the public land laws generally, except to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 28, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

7. At 8:30 a.m. on September 28, 1998, the lands described in paragraph 2(b) will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

8. At 8:30 a.m. on September 28, 1998, the lands described in paragraphs 1 and 2, except as provided in paragraph 3, will be opened to the location and entry under the United States mining laws for nonmetalliferous minerals, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws for nonmetalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 13, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23047 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP7–0199; OR–19600 (WA)]

Public Land Order No. 7355; Revocation of Executive Order Dated February 25, 1914; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order in its entirety as to the remaining 40 acres of public land withdrawn for Bureau of Land Management Powersite Reserve No. 418. The land is no longer needed for the purpose for which it was withdrawn. This action will open approximately 30 acres to surface entry. This land has been and will remain open to mining. The remaining 10 acres will remain closed to surface entry and mining due to another overlapping withdrawal. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated February 25, 1914, which established Powersite Reserve No. 418, is hereby revoked in its entirety:

Willamette Meridian

T. 6 N., R. 13 E.,
Sec. 25, NW¼NW¼.

The area described contains 40 acres in Klickitat County.

2. The following described land is included in the Klickitat Wild and Scenic River System withdrawal and will remain closed to operation of the public land laws, including the mining laws, but not the mineral leasing laws.

Willamette Meridian

That portion of land lying within ¼ mile of the bank of the Klickitat River:

T. 6 N., R. 13 E.,
Sec. 25, NW¼NW¼.

The area described contains approximately 10 acres in Klickitat County.

3. At 8:30 a.m. on November 27, 1998, the land described in paragraph 1, except as provided in paragraph 2, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 27, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The State of Washington has a preference right, as to the land referenced in paragraph 3, for public highway right-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: August 13, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23054 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–08–1430–01; AZA 22763]

Arizona: Notice of Realty Action: Noncompetitive Sale of Public Land in Yuma County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sale.

SUMMARY: The following land has been found suitable for noncompetitive sale pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not lests than the

appraised fair market value of $32,775.00. The following described land will be offered by noncompetitive sale to Timothy Conovaloff:

Gila and Salt River Meridian, Arizona

T. 9 S., R. 24 W.,
Sec. 8, lot 8.

Containing 4.37 acres, more or less.

The land will not be offered for sale until at least 60 days after the date of this notice. The subject lands contain no known mineral values and the mineral interests will be conveyed simultaneously to the purchaser. The required $50.00 nonrefundable filing fee has been received. The patent, when issued, will contain certain reservations to the United States and will be subject to any valid existing rights. The land is currently withdrawn under Secretarial Order dated July 20, 1905, Withdrawal for Yuma Project. The withdrawal will be lifted prior to issuing patent. The land described is hereby segregated from appropriation under the public land laws, including the mining laws. pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager. Yuma Field Office, address below. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale is available for review at the Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, AZ 85365.

FOR FURTHER INFORMATION CONTACT: Lucas Lucero, Realty Specialist, address above, (520) 317–3237.

Dated: August 20, 1998.

Gail Acheson,

Field Manager.

[FR Doc. 98–23061 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–056–1220–00: GP8–0270]

Motor Vehicle, Firearm, and Alcohol Restrictions; Oregon

AGENCY: Prineville District.

ACTION: Notice is hereby given that the area legally described below is closed to motor vehicle use and the discharge of firearms yearlong. This area is also subject to the alcohol and drug restrictions described below.

Legal Description: This closure order applies to the areas within: Township 22 South, Range 10 East, Section 1, North half, east of the Burlington Northern railroad tracks and south of Rosland Road, and Township 22 South, Range 11 East, Section 6, North half, west of Road 2205 and south of Rosland Road. Exceptions apply as described below.

EFFECTIVE DATE: In the absence of any further action by the District Manager, the proposed special rules described below will become the final determination of the Department of the Interior, on or before September 1, 1998.

Special Rules: The area legally described above is closed to the discharge of firearms yearlong.

The following alcohol and drug restrictions apply yearlong to the area legally described above: No person under the age of 21 years shall attempt to purchase or acquire alcoholic liquor. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardian's consent, no person under the age of 21 years shall have personal possession of alcoholic liquor. For the purposes of this regulation, personal possession of alcoholic liquor includes the acceptance or consumption of a container of such liquor, or any portion thereof or a drink of such liquor. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service. In addition, operating or being in actual physical control of a motor vehicle is prohibited while: 1. Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or 2. The alcohol content of the operator's blood is .08 percent or more by weight of alcohol in the blood. These provisions also apply to an operator who is or has been legally entitled to use alcohol or another drug.

The area legally described above is closed to the operation of motorized vehicles yearlong with the following exceptions: the staging area and mineral pits now known as the ''Beginner'' and ''Advanced'' Riding Areas south of Rosland Road, the 3.5 mile designated motorized trail south of the Riding Areas, the pipeline right-of-way east of the Riding Areas, and the phone line right-of-way west of the Riding Areas. In addition, high clearance vehicles and passenger cars are prohibited from driving in the mineral pits now known as the ''Beginner'' and ''Advanced'' Riding Areas south of Rosland Road and on the 3.5 mile designated trail south of the Riding Areas. The Riding Areas and designated trails are open to motorcycles, all-terrain vehicles, and snowmobiles. Operation of motorized vehicles is prohibited between dusk and dawn in the Riding Areas south of Rosland Road and on the 3.5 mile designated trail south of the Riding Areas.

This closure and restriction order amends a Notice in FR Doc. #96–31235 on December 6, 1996 (Volume 61, Number 237, Page 64921). The purpose of reopening a portion of the area to motorized use is to increase recreational opportunities. The purpose of retaining the motor vehicle closure order in the remaining area and enforcing shooting and alcohol restrictions is to increase visitor safety and public satisfaction and to reduce impacts to soils, vegetation, wildlife, and cultural resources. Exemptions to the motor vehicle closure order apply to administrative personnel including authorized representatives of rights-of-way holders for access along, and maintenance of, the existing pipeline right-of-way (Serial #OR 010556), phone line right-of-way (Serial #OR 23937), and material site right-of-way (Serial #L 015800). Other exemptions to this closure order may be made on a case by case basis by the authorized officer. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

Comment Period

Interested parties may submit comments within 30 days of the publication of this notice. Please send comments to the Prineville District Manager, Attention Law Enforcement, Bureau of Land Management, P.O. Box 550, Prineville, Oregon 97754. Any adverse comments will be evaluated by the District Manager, who may vacate or modify these proposed amendments and issue a final determination.

FOR FURTHER INFORMATION CONTACT: Karen Perault, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754. (Telephone 541–416–6711.)

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: August 18, 1998.

James L. Hancock,

District Manager.

[FR Doc. 98–23044 Filed 8–26–98; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383; Sanctions Proceeding and Bond Forfeiture/Return Proceedings]

In the Matter of Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Commission Determination Not to Review an Initial Determination Terminating Sanctions Proceeding and Bond Forfeiture/ Return Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 106) issued by the presiding administrative law judge terminating the sanctions proceeding and the bond forfeiture/return proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3152.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. (''Quickturn''). 61 FR. 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation (''Mentor'') and Meta Systems (''Meta'') (collectively ''respondents''). On July 8, 1996, the presiding administrative law judge (''ALJ'') issued an initial determination (''TEO ID'') granting Quickturn's motion for temporary relief.

On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor. The Commission imposed a bond of 43 percent of entered value on respondents' importations and sales of emulation systems and components thereof during the remaining pendency of the investigation.

On September 24, 1997, the Commission determined to modify respondents' temporary relief bond in the investigation. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond increased to 180 percent of the entered value of the subject imported articles if the entered value is not based on transaction value.

On July 31, 1997, the ALJ issued an initial determination (''Final ID''), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor. These final relief orders were referred to the President on December 4, 1997, and the 60-day Presidential review period expired on February 2, 1998, without the President taking action to disapprove them.

On July 31, 1997, the ALJ also issued Order No. 96 in the investigation finding that respondents and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Respondents petitioned for review of Order No. 96. On March 6, 1998, the Commission denied most aspects of respondents' petition and determined to adopt Order No. 96. The Commission ordered the ALJ to issue an ID within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission.

On February 26, 1998, Quickturn filed a motion pursuant to Commission rule 210.50(d) for forfeiture of the full amount of the bonds posted by respondents in connection with their activities during the temporary relief period and Presidential review period. On March 13, 1998, respondents filed an opposition to Quickturn's motion and a motion for return of their bonds. The Commission referred these motions to the ALJ for issuance of an ID within nine months.

While the monetary sanctions and bond forfeiture/return proceedings were pending before the ALJ, Quickturn and the respondents submitted a joint motion for determinations concerning the amount of monetary sanctions and the amount of respondents' bond forfeiture, based on a stipulation agreement between the parties. Based on this joint motion, on July 21, 1998, the ALJ issued Order No. 106, in which he approved the stipulated amounts and determined to terminate the monetary sanctions and bond forfeiture/return proceedings. None of the parties filed a petition for review of Order No. 106.

The Commission has determined not to review Order No. 106. In accordance with the stipulation agreement between the parties, the Commission will instruct the U.S. Customs Service to release respondents' bonds after the Commission has received written notification from Quickturn that the amount stipulated for forfeiture of respondents' bonds has been paid to Quickturn.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Copies of the public versions of Order No. 106 and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–22985 Filed 8–26–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Notice of Appeal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 26, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–694. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection will be used by the Service in considering appeals of denials of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 respondents at 30 Minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regrading the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 24, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–22983 Filed 8–26–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Emergency Federal Law Enforcement Assistance.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 26, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. Office of General Counsel, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Section 404(b) of the Immigration and Nationality Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 24, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–22984 Filed 8–26–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1940–98; AG Order No. 2175–98]

RIN 1115–AE 26

Extension of Designation of Montserrat Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until August 27, 1999, the Attorney General's designation of Montserrat under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act, as amended (Act). Accordingly, eligible aliens who are nationals of Montserrat (or who have no nationality and who last habitually resided in Montserrat) may re-register for TPS and are eligible for an extension of employment authorization. This re-registration is limited to persons who register for the initial period of TPS, which ends on August 27, 1998.

EFFECTIVE DATES: This extension of designation is effective August 28, 1998, and will remain in effect until August 27, 1999. The re-registration procedures become effective August 27, 1998, and will remain in effect until September 25, 1998.

FOR FURTHER INFORMATION CONTACT: George Raftery, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 305–3199.

SUPPLEMENTARY INFORMATION:

Background

Subsection 308(b)(7) of the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 104–208, dated September 30, 1996, redesignated section 244A of the Act as section 244 of the Act. Under this section, the Attorney General continues to be authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety,

On August 28, 1997, the Attorney General designated Montserrat for Temporary Protected Status for a period of 12 months (62 FR 45685).

Based on a thorough review by the Departments of State and Justice of all available evidence, the Attorney General finds that the environmental disaster in Montserrat continues and that, due to such environmental disaster, requiring the return of nationals to Montserrat would pose a serious threat to their personal safety.

This notice extends the designation of Montserrat under the Temporary Protected Status program for an additional 12 months, in accordance with subsections 244(b)(3)(A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Montserrat (or who have no nationality and who last habitually resided in Montserrat) must comply in order to reregister for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Montserrat's TPS designation, late initial registrations are possible for some Montserratians under 8 CFR 244.2(f)(2). Such late initial registrants must have been ''continuously physically present'' in the United States since August 28, 1997, must have ''continuously resided'' in the United States since August 22, 1997, must have had a valid immigrant or nonimmigrant status during the original registration period or have had an application for such status pending during the initial registration period, and must register no later than 30 days from the expiration of such status or the denial of the application for such status. Any national of Montserrat who has already applied for, or plans to apply for, asylum but whose asylum application has not yet been approved may also apply for TPS. An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit.

Nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who have been continuously physically present in the United States since August 28, 1997, and have continuously resided in the United States since August 22, 1997, may re-register for TPS within the registration period which begins on August 27, 1998, and ends on September 25, 1998.

This notice concerns an ''extension of TPS designation,'' not a ''redesignation of TPS.'' An extension of TPS designation does not change the eligibility requirements for TPS including, most importantly, the required dates of continuous residence and continuous physical presence in the United States.

Nationals of Montserrat may register for TPS by filing an Application for Temporary Protected Status, Form I–821, which requires a filing fee (instructions regarding the payment of fees for re-registration are contained in paragraph 5 below). The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. Those TPS applicants who already have employment authorization, including some asylum applicants, and those who have no need for employment authorization, including minor children, need pay only the I–821 fee, although they must complete and file the I–765. In all other cases, the appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request is submitted under 8 CFR 244.20 to the Immigration and Naturalization Service.

Notice of Extension of Designation of Montserrat Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Act (8 U.S.C. 1254), and pursuant to subsections 244(b)(3)(A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning whether the conditions that made Montserrat eligible for designation under the TPS program continue to exist. Based on these consultations, I have determined that the conditions for the original designation of Montserrat under the Temporary Protected Status program continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Montserrat under subsection 244(b) of the Act is extended for an additional 12-month period from August 28, 1998 to August 27, 1999.

(2) I estimate that there are approximately 300 nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Montserrat (or an alien having no nationality who last habitually resided in Montserrat) who received a grant of TPS during the initial period of designation, from August 28, 1997, to August 27, 1998, must comply with the re-registration requirements contained in 8 CFR 244.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Montserrat (or an alien having no nationality who last habitually resided in Montserrat) who previously has been granted TPS, must re-register by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on August 27, 1998, and ending on September 25, 1998, in order to be eligible for Temporary Protected Status during the period from August 28, 1998, until August 27, 1999. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. A Form I–765 must be filed with the Form I–821. If the alien requests employment authorization for the extension period, the fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), or a properly documented fee waiver request pursuant to 8 CFR 244.20, must accompany the Form I–765. An alien who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but in such cases no fee will be charged.

(6) Pursuant to subsection 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 27, 1999, the designation of Montserrat under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the TPS program for nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: August 21, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–23035 Filed 8–26–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1197]

ZRIN 1121–ZB33

Announcement of the Second Meeting of the Methamphetamine Interagency Task Force

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the second meeting of the Methamphetamine Interagency Task Force.

DATES: October 5, 1998, from 9:00 a.m. to 5:00 p.m. and October 6, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: W. H. Thompson Alumni Center, University of Nebraska at Omaha, 67th & Dodge Street, Omaha, Nebraska 61882.

FOR FURTHER INFORMATION CONTACT: If you want further information about how to attend this meeting: Heather Gartman, National Institute of Justice, 810 7th Street, N.W., Washington, D.C. 20531. Telephone: (301) 519–5313. Facsimile: (301) 519–5212. E-mail: hgartman@ncjrs.org.

If you want to submit written questions: Peter Owen, National Institute of Justice, 810 7th Street, N.W., Washington, D.C. 20531. Telephone: (202) 514–2533. Facsimile: (202) 307–6394. E-mail: owenp@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under Section 501 of the Comprehensive Methamphetamine Control Act of 1996, Pub. L. 104–237, 110 Stat 3099 (October 3, 1996), and as applicable under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

Background

The purpose of the Methamphetamine Interagency Task Force is to design, implement, and evaluate education, prevention, treatment practices and strategies by the Federal government with respect to methamphetamine and other synthetic stimulants.

The Methamphetamine Interagency Task Force will hold its second meeting. The agenda will include review of the summary report of the previous task force meeting; discussion of recommendations from related methamphetamine workgroups and conferences; establishment of reporting milestones, task plan, and subcommittee structure for the Task Force; and open discussion of issues of concern to Task Force Members.

The meeting will be open to the public on a space-available basis, but you must make reservations if you want to attend. When you arrive, you must bring a photo ID in order to gain admittance. See the contact point listed above to reserve a space and to advise us of any special needs. If you wish to submit written questions to this session, you should notify the contact point listed above by Monday, September 21, 1998. With your questions, you must submit your name, affiliation, and means of contact (address or telephone number). If you are interested in this meeting, we encourage you to attend.

David Boyd,

Acting Director, National Institute of Justice.

[FR Doc. 98–23086 Filed 8–26–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mettiki Coal Corporation

[Docket No. M–98–67–C]

Mettiki Coal Corporation, 293 Table Rock Road, Oakland, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.500(b) (permissible electric equipment) to its Mettiki Mine (I.D. No. 18–00621) located in Garrett County, Maryland. The petitioner requests a modification of the standard to allow nonpermissible hand-held, battery-powered drills and nonpermissible electronic testing and diagnostic equipment to be taken into or used inby the last open crosscut. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Jewell Smokeless Coal Corporation

[Docket No. M–98–68–C]

Jewell Smokeless Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 77.214(a) (refuse piles; general) to its Dominion Mine No. 25 (I.D. No. 44–00649) located in Buchanan County, Virginia. The petitioner proposes to construct a refuse bench fill in an area containing abandoned mine openings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Arclar Company

[Docket No. M–98–69–C]

Arclar Company, 29 West Raymond, P.O. Box 444, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.503

(permissible electric face equipment; maintenance) to its Big Ridge Mine (I.D. No. 11–02879) located in Saline County, Illinois. The petitioner proposes to use fabricated metal locking devices with a locking screw threaded through a steel bracket instead of padlocks to lock battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The petitioner states that initial and refresher training will be provided to all operators of these machines, and to all miners who couple and uncouple battery plugs on the machines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Jim Walter Resources, Inc.

[Docket No. M–98–70–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its No. 4 Mine (I.D. No. 01–01247) located in Tuscaloosa County, Alabama. Due to hazardous conditions in certain areas of the air course, traveling the affected area would be unsafe. The petitioner proposes to establish evaluation points inby and outby the deteriorated return; and to have a certified person examine these evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Mettiki Coal Corporation

[Docket No. M–98–71–C]

Mettiki Coal Corporation, 293 Table Rock Road, Oakland, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Mettiki Mine (I.D. No. 18–00621) located in Garrett County, Alabama. The petitioner proposes to use specially designed high-voltage cables for longwall mining equipment. The petitioner states that the cables would have a center ground check conductor not smaller than 16 A.W.G. and constructed of symmetrical 3/C, 3/G, and 1/GC; the type would be CABLEC/BICC Anaconda Brand 5KV, 3/C type SHD&GC, Americable Tiger Brand, 3/C, 5KV, type SHD-CGC; Pirelli 5KV, 3/C, type SHD–CENTER–GC, or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S–75–381 for type SHD, three-conductor cables; that the cables would be MSHA accepted as flame-resistant and used only for high-voltage longwall equipment; and that all miners performing electrical maintenance on high-voltage cables on the longwall would be trained to safely install, splice, and repair the specially designed high-voltage cables. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Independence Coal Company, Inc.

[Docket No. M–98–72–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Justice # 1 Mine (I.D. No. 46–07273) located in Boone County, West Virginia. The petitioner requests a modification of the standard to allow plugging of oil and gas wells using specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Powell Mountain Coal Company, Inc.

[Docket No. M–98–73–C]

Powell Mountain Coal Company, Inc., Rt., 1, Box 140, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation of requirements) to its Wallins A Mine (I.D. No. 44–06364) located in Lee County, Virginia. Due to low coal seam heights, the petitioner proposes to operate its electric face equipment such as the Simmons-Rand 828 Unahauler battery coal haulers and Simmons-Rand Model 482 scoops, without canopies. The petitioner asserts that application of the standard would result in a diminution of safety to the miners.

8. Hecla Mining Company

[Docket No. M–98–04–C]

Hecla Mining Company, 6500 Mineral Drive, Coeur d'Alene, Idaho 83815–8788 has filed a petition to modify the application of 30 CFR 49.8(b) (training for mine rescue teams) to its Rosebud Mine (I.D. No. 26–02241) located in Pershing County, Nevada. The petitioner requests a modification of the standard to allow miners who have qualified as mine rescue personnel in mining districts that are subject to MSHA jurisdiction, to be considered as fulfilling the requirement of the standard; to allow similarly trained miners who are not designated as mine rescue personnel, including back-up mine rescue personnel from Getchell Gold Corporation's mine to be considered as fulfilling the requirements of the standard; to allow training for the mine rescue personnel to be not less than five (5) total sessions per year with at least three (3) of the five (5) sessions to be conducted underground; and to allow a minimum of two and one-half (2½) hours per session during each of the five (5) sessions to be spent using oxygen. The petitioner states that the total annual cumulative amount of training would equal to 12½ hours under oxygen, and a total training regimen of 50 hours per year; and that all miners who have not had the required training would have to complete the training or complete training required of mine rescue personnel before being allowed to assume any positions for mine rescue personnel. The petitioner asserts that application of the standard would result in a diminution of safety the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov'', or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1998. Copies of these petitions are available for inspection at that address.

Dated: August 14, 1998.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–22956 Filed 8–26–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of Meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States, will meet in Hampton, Virginia on Tuesday and Wednesday, September 22 and 23, 1998.

DATES: The Committee will meet on September 22 and 23, 1998. On September 22, the Committee will meet from 9:00 A.M. until approximately 5:00 P.M.; on September 23, the Committee will meet from 8:30 A.M. until approximately 5:00 P.M.

ADDRESSES: The Committee will meet in Ballroom B at the Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia 23669 ((757) 727–9700).

Mail comments views, or statements in response to this notice to Larry Liberatore, Maritime Facilitator, Office of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Phone: (202) 219–8061; Fax: (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA; Phone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 219–8061 no later than September 14, 1998, to obtain appropriate accommodations.

Meeting Agenda

This meeting will include discussion of the OSHA shipyard strategic planning goals; vertical tandem lifts in the marine cargo handling environment; ship scrapping initiatives and developments; training partnerships; use of hanging scaffolds in shipyards; general OSHA update, including a standards update and an update on the shipyard fire protection negotiated rulemaking committee.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with 25 copies, to Larry Liberatore at the address provided above. Submissions received by September 10, 1998, will be provided to the members of the committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Larry Liberatore at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656, the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, D.C., this 20th day of August, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–23087 Filed 8–26–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, September 29, 1998, from 9 a.m. to 4:00 p.m. The meeting will be held at the National Communications System, 701 S. Court House Road, Arlington VA.

- Opening/Administrative Remarks.
- Status of the TSP Program.
- CPAS Update.
- Y2K Compliance & Implications.

Anyone interested in attending or presenting additional information to the Committee, please contact CDR Lynne Hicks, Manager, TSP Program Office, (703) 607–4930, or Betty Hoskin (703) 607–4932 by September 15, 1998.

Frank McClelland,

Technology & Standards Division.

[FR Doc. 98–23062 Filed 8–26–98; 8:45 am]

BILLING CODE 8001–08–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 25, 1998. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

Permit Application No. 99–003

1. *Applicant:* Wayne Z. Trivelpiece, Department of Biology, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit is Requested: Take, Enter Site of Special Scientific Interest and Import into the U.S.A. The applicant is continuing a study of the behavioral ecology and population biology of the Adelie, Gentoo, and Chinstrap penguins and the interactions among these species and their principal avian predators: skuas, gulls, sheathbills, and giant petrels. The applicant proposes to band 1000 Adelie and Gentoo penguin chicks, plus adults of all three penguin species, as needed (not greater than 150 per species), to fulfill research goals. In addition, bands will be applied to adults and chicks of the avian predator species as necessary. The applicant will continue a study of the penguins' foraging habits which involves the application of radio-transmitters (Txs), satellite tags (PTTs), and time-depth recorders (TDRs) to a maximum of 50 adult penguins per species. The study of foraging habits also involves the stomach pumping of a maximum of 40 adult penguins per species. Finally the applicant will collect one (1) milliliter blood samples from a maximum of 20 breeding adults of each penguins species for use in DNA analysis.

The applicant also proposes to salvage carcasses and skeletons of penguins and Antarctic flying birds for import into the U.S. for educational and scientific study purposes. The salvaged specimens will be returned to Montana State University for public display and teaching aids in educational programs.

Location: Admiralty Bay (SSSI #8), King George Island, South Shetland Islands.

Dates: September 25, 1998 to April 1, 1999.

Permit Application No. 99–004

2. *Applicant:* Donald B. Siniff, Department of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, St. Paul, Minnesota 55108.

Activity for Which Permit is Requested: Taking, Export from the U.S. and Import into the U.S. The applicant proposes to continue a long-term study of the Weddell seal population surrounding McMurdo Station by tagging, collection of blood, tissue and stomach samples and attaching VHF and satellite-linked radio transmitters. Up to 600 pups and 500 adult Weddell seals will be handled. Tags will be attached to all pups born into the McMurdo Sound population and tags will be replaced on those adults who have lost their tags. Blood and tissue samples will be collected for current and future research examining the behavioral ecology, paternity and genetic relatedness within and between seal colonies. Additionally, blood samples will be used for examination of blood hormones, blood chemistry and blood parasites and various health parameters. Stomach samples will be taken to supplement the scant data on Weddell seal prey species. These samples will be analyzed in McMurdo or returned to the home institutions in the U.S. VHF transmitters will be attached to the dorsal pelage of male seals using a marine epoxy. The transmitters will permit tracking of the seals local movements around the colonies and time spent above and below the surface throughout the 24 hour day, which may assist in correlating activity with paternity, as determined from the genetic data. The transmitters will be removed or will fall off during the annual molt. The satellite-linked radio transmitters will be attached to the dorsal pelage of adults and pups, which will allow tracking of the seals during the winter-over period. Demographic data collected over the years has shown that pups tagged within the study area are rarely seen for 4–5 years following tagging. The transmitters will help determine where the pups go and will also collect extremely rare data on the adult movements of seals during the winter-over months. Finally the applicant proposes to salvage parts of seal carcasses and import them into the U.S. for use in educational training and research. All captured seals will be released unharmed.

Furthermore, the applicant proposes to export a skull of an Antarctic Weddell seal (*Leptonychotes weddellii*) from the University of Minnesota, through Los Angeles International Airport to McMurdo Station, Antarctica. This skull was salvaged from a dead seal found in McMurdo Sound in 1996 and shipped back to the United States. It is being returned for permanent display in the Crary Science and Engineering Center at McMurdo Station. The skull will serve as an education tool. This particular seal was tagged in 1971 and returned to McMurdo Sound to breed and give birth a minimum of 11 times. Displays such as this are helpful in educating the public to the benefit and productivity of a long term research program.

Location: McMurdo Station and McMurdo Sound, Antarctica.

Dates: October 1, 1998 to January 31, 2002.

Permit Application No. 99–005

3. *Applicant:* Donald B. Siniff, Department of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, St. Paul, Minnesota 55108.

Activity for Which Permit is Requested: Taking, enter Site of special Scientific Interest and Import into the U.S. The applicant proposes to enter the White Island, Site of Special Scientific Interest No. 18, for the purpose of studying the Weddell seal colony. The White Island seal population has been a focus of interest dating to the early 1960's. this group of seals represents a isolated population that is very small and the evidence suggests it has very limited exchange of individuals with the McMurdo Sound population. Since intensive censusing was begun in the late 1980's, no new untagged adults have appeared in the population. Thus, the genetics of this population is of interest because of the possibility of increasing the understanding of such concepts as inbreeding depression and genetic drift. all pups born in this colony since 1991 have been tagged, and in 1997 there was evidence of a pup born to an individual tagged as a pup in 1991. This observation supports the speculation of little or no emigration from the colony. The applicant proposes to set up a temporary camp at White Island that would be occupied by 3–4 people for up to one week in order to continue tagging seal pups and collecting tissue and blood samples for further study. The one week stay is long enough to ensure that each individual at the colony has been identified, which is vital to accurate predictions of population size and relatedness between individuals.

Location: North-west White Island, McMurdo Sound (SSSI #18).

Dates: October 1, 1998 to January 31, 1999.

Permit Application No. 99–006

4. *Applicant:* Arthur L. DeVries, Ecology, Ethology & Evolution, 515 Morrill Hall, University of Illinois, 505 South Goodwin Avenue, Urbana, Illinois 61801.

Activity for Which Permits is Requested: Introduce Non-Indigenous Species into Antarctica. The applicant proposes to transport 15 New Zealand black cod (*Notothenia angustata*) to the McMurdo Station aquarium where the cod will be cold acclimated in a closed sea-water system. The cod will be used in experiments to determine the role of antifreeze glycopeptides in freezing avoidance and for isolating DNA. The DNA will be screened for the presence of an ''unexpressed'' antifreeze

glycopeptide gene. Sensitive blood serum freezing habit tests suggest that cold acclimated black cod synthesize small amounts of antifreeze glycopeptide after acclimation to +4° C for 6 weeks.

Some specimens will be injected with purified antifreeze glycopeptides to determine if the presence of the antifreeze glycopeptides in the circulation is sufficient to provide avoidance of freezing or if the antifreeze glycopeptides need to be integrated into the membranes of protected cells by synthetic processes. In addition, some specimens will be injected with small ice crystals and the fate of the ice determined.

The integument of the cod will also be used in experiments to determine whether it is a barrier to ice propagation due to its physical properties or whether antifreeze gylcopeptides provide a physio-chemical barrier in conjunction with the integument. The brain lipids will also be analyzed to determined the degree of unsaturation of the phospholipid fatty acids. Upon completion of the experiments, the black cod will be sacrificed and preserved in formalin.

Location: McMurdo Station, Ross Island, Antarctica.

Dates: October 1, 1998 to February 27, 1999.

Permit Application No. 99–007

5. *Applicant:* William R. Fraser, Biology Department, 310 Lewis Hall, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit is Requested: Taking, Enter Site of Special Scientific Interest and Enter Specially Protected Areas. The applicant is a participant in two long-term ecological research (LTER) programs in the western Antarctic Peninsula region. The focus of the research is to assess how annual environmental variability affects seabird diets, breeding success, growth rates, survival and recruitment, behavior, population trends, foraging success and seasonal dispersal. To accomplish these objectives, the applicant proposes to census populations; capture, mark, and weigh a select number of adults, chicks and eggs; and obtain diet samples through stomach lavage. The applicant proposes to enter the following specially protected areas:

Dion Islands, Marguerite Bay (Specially Protected Area No. 8)—This site has the only known breeding population of Emperor Penguins in the western Antarctic Peninsula. The applicant proposes to conduct a census in order to update the population data available on this species, since a census has not been conducted in more than two decades.

Litchfield Island, Arthur Harbor (Specially Protected Area No. 17) and Biscoe Point, Anvers Island (Site of Special Interest No. 20)—These two sites near Palmer Station, Anvers Island, will serve as research control areas. The applicant proposes to enter Litchfield Island 2–3 times a week and Biscoe Point up to 5 times a season, for 2–3 hours each visit, to census seabirds and seals and conduct habitat mapping. Heavily vegetated areas will be avoided.

Avian Island, Marguerite Bay (Specially Protected Area No. 21)—This site will serve as an alternate site in the Marguerite Bay region for obtaining Adelie Penguin diet samples and censuses during the annual Palmer LTER research cruise. The applicant proposes to obtain diet samples from 20–25 penguins to determine trends in diets and populations of this species in the Marguerite Bay region to determine if it differs from those in the Palmer Station region due to differences in annual sea ice conditions.

Location: Dion Island (SPA #8) and Avian Islands (SPA #21), Marguerite Bay, Litchfield Island (SPA #17) and Biscoe Point, Anvers Island (SSSI #20).

Dates: October 1, 1998 to April 30, 2002.

Permit Application No. 99–008

6. *Applicant:* William R. Fraser, Biology Department, 310 Lewis Hall, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit is Requested: Taking; Import into the U.S. The applicant, during the course of normal research, occasionally encounters specimens of various species that have died of natural causes. The applicant proposes to salvage, on an opportunistic basis, specimens of seabirds and seals for import to the U.S. for use in museums and educational institutions.

Location: Palmer Station, Anvers Island and vicinity.

Dates: October 1, 1998 to April 30, 2000.

Permit Application No. 99–009

7. *Applicant:* William R. Fraser, Biology Department, 310 Lewis Hall, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit is Requested: Taking; Import into the U.S. The applicant is a participant in two long-term ecological research (LTER) programs in the western Antarctic Peninsula region. The focus of the research is to assess how annual environmental variability affects seabird diets, breeding success, growth rates, survival and recruitment, behavior, population trends, foraging success and seasonal dispersal. To accomplish these objectives, the applicant proposes to census populations; capture, mark, and weigh a select number of adults, chicks and eggs; obtain diet samples through stomach lavage, place radio/satellite transmitters on some individuals to develop profiles on foraging effort and dispersal; and use developing GIS/GPS technologies to map and characterize breeding habitat features. The applicant estimates 1,700 Adelie penguins, 1,000 Chinstrap penguins, 200 South Polar Skuas, 100 Brown Skuas, 1,000 Giant Fulmars, 500 Blue-eyed Shags and 500 Kelp Gulls will be involved in various parts of the research effort. All seabirds will be released unharmed.

Location: Palmer Station, Anvers Island and vicinity.

Dates: October 1, 1998 to April 30, 2002.

Permit Application No. 99–010

8. *Applicant:* Rennie S. Holt, Chief Scientist, AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92093.

Activity for Which Permit is Requested: Taking, Import into the United States, and Enter Site of Special Scientific Interest. The applicant will be conducting ship-supported and land-based studies in the region of the Antarctic Peninsula. Studies encompassing census surveys, attendance, energetics, foraging, and long term monitory (censusing/tagging) of Antarctic fur seals (*Arctocephalus gazella*) will be conducted at the AMLR Program campsite at Cape Shirreff, Livingston Island (Site of Special Scientific Interest No. 32), Seal Island and on the San Telmo Islands. Up to 80 adult and 1500 pups will be captured and tagged. In addition up to 40 female/pup pairs will be captured to quantify the foraging costs of maternal investment in pups associated with changes in foraging strategies observed. Energetic costs and benefits of different foraging patterns can be determined by simultaneous measurements of energy expenditure (isotope), food intake (isotope), dive depth, duration, time of day and dive frequency (via TDR's) swim speed (TDR), and foraging location (satellite transmitter). Attendance information collected from these instrumented females will address issues such as (a) prey availability and subsequent impact on females and pups, and (b) attendance-related factors of pup growth. Milk extraction and gastric lavage/intubation will be used for

energetic studies, providing trophic information.

In addition the applicant proposes to salvage bones and carcasses of dead seals and other cetacean species found on shore for importation to the U.S. These materials will be stored at the Southwest Fisheries Science Center for education and research purposes.

Location: Cape Shirreff, Livingston Island (SSSI #32), Byers Peninsula (SSSI #6), South Shetland Island, Antarctic Peninsula.

Dates: October 31, 1998 to April 1, 2001.

Nadene G. Kennedy,

Permit Officer, Officer of Polar Programs.

[FR Doc. 98–23040 Filed 8–26–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: September 16, 17, & 18, 1998.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Rooms 365, 370, 390, 730 and 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1553.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–23036 Filed 8–26–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Materials Research (1203).

Dates & Times: September 22, 6:00 pm–10:00 pm and September 23–24, 1998 8:30 am–5:00 pm.

Place: National High Magnetic Field Laboratory (NHMFL), Tallahassee, FL.

Type of Meeting: Closed.

Contact Person: Dr. W. Lance Haworth, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1815.

Purpose of Meeting: Annual NSF progress review of the National High Magnetic Field Laboratory.

Agenda: Evaluation of progress and plans in the third year of the current five-year award.

Reason for Closing: Some of the information presented through the site visit will be of a proprietary or confidential nature, such as financial data, salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–23037 Filed 8–26–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).

Date and time: September 21–23, 1998, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 730, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Polly A. Penhale, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1033.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Biology and Medicine proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–23038 Filed 8–26–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).

Date and time: September 21–23, 1998, 8:00 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Julie Palais, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Glaciology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–23039 Filed 8–26–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Energy Corporation (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would revise Technical Specification (TS) Section 4.6.5.1.b.3 regarding surveillance requirements for the ice condenser ice bed. One requirement specifies that a visual inspection of flow passages be performed once per 9 months to ensure that there is no significant ice and frost accumulation (less than 0.38 inch). The licensee proposed to relax the visual inspection frequency of the lower plenum support structures and turning vanes to once per 18 months. The remaining parts of the ice condenser will continue to be inspected at 9-month intervals.

The licensee requested approval on an exigent basis pursuant to its request for enforcement discretion for McGuire, Units 1 and 2. The staff verbally granted the enforcement discretion on August 13, 1998, and affirmed it by a subsequent notice of enforcement discretion (NOED) letter dated August 14, 1998. The NOED stated that the enforcement discretion is in effect until the issuance of related amendments to revise the subject TS. Consistent with its procedure, the staff intends to issue amendments to revise the problematic TS within 4 weeks of the NOED letter. This issuance schedule would not be accommodated by the normal 30-day notice to the public.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no significant effect on accident probabilities or consequences. The ice condenser is not an accident initiating system; therefore, there will be no impact on any accident probabilities by the approval of this amendment. Each unit's ice condenser is currently fully capable of meeting its design basis accident mitigating function. Therefore, there will be no impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators, since the ice condenser is an accident mitigating system.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The ice condenser for each unit is already capable of performing as designed. Operating experience has shown that the performance of the ice condenser would not be adversely impacted by extending the frequency of these SRs [surveillance requirements] to an 18-month interval. No safety margins will be impacted.

Based upon the preceding analysis, Duke Energy [Corporation] has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, the Gellman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 28, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shal be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 14, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Dated at Rockville, Maryland, this 20th day of August 1998.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22978 Filed 8–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 AND 50–414]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Energy Corporation (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would revise Technical Specification (TS) Section 4.6.5.1.b.2 regarding surveillance requirements for the ice condenser ice bed. One requirement specifies that a visual inspection of flow passages be performed once per 9 months to ensure that there is no significant ice and frost accumulation (less than 0.38 inch). The licensee proposed to relax the visual inspection frequency of the lower plenum support structures and turning vanes to once per 18 months. The remaining parts of the ice condenser will continue to be inspected at 9-month intervals.

The licensee requested approval on an exigent basis pursuant to its request for enforcement discretion for Catawba Unit 2. The staff verbally granted the enforcement discretion on August 13, 1998, and affirmed it by a subsequent notice of enforcement discretion (NOED) letter dated August 14, 1998. The NOED stated that the enforcement discretion is in effect until the unit enters Mode 5 for the End-of-Cycle 9 Refueling Outage, currently projected to be on September 5, 1998. Consistent with its procedure, the staff intends to issue amendments to revise the problematic TS within 4 weeks of the NOED letter. This issuance schedule would not be accommodated by the normal 30-day notice to the public.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no significant effect on accident probabilities or consequences. The ice condenser is not an accident initiating system; therefore, there will be no impact on any accident probabilities by the approval of this amendment. Each unit's ice condenser is currently fully capable of meeting its design basis accident mitigating function. Therefore, there will be no impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators, since the ice condenser is an accident mitigating system.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The ice condenser for each unit is already capable of performing as designed. Operating experience has shown that the performance of the ice condenser would not be adversely impacted by extending the frequency of these SRs [surveillance requirements] to an 18-month interval. No safety margins will be impacted.

Based upon the preceding analysis, Duke Energy [Corporation] has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 28, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 14, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 20th day of August 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22979 Filed 8–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit No. 1; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Northeast Nuclear Energy Company (the licensee) to withdraw its July 2, 1996, application for proposed amendment to Facility Operating License No. DPR–21 for the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The proposed amendment would have revised the Technical Specifications to add limiting conditions for operation and surveillance requirements for the safety/relief valve electrical lift design modification.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 6, 1996 (61 FR 57487). However, by letter dated August 7, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 2, 1996, as supplemented by letters dated September 3 and 18, and October 6, 1997, and the licensee's letter dated August 7, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 20th day of August 1998.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22981 Filed 8–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Draft Environmental Assessment and Finding of No Significant Impact Related to Proposed License Amendments To Increase Maximum Rated Thermal Power Level Southern Nuclear Operating Company, Inc., et al.; Edwin I. Hatch Nuclear Plant, Units 1 and 2

AGENCY: U.S. Nuclear Regulatory Commission (Commission, NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC has prepared a draft environmental assessment related to a request by the Southern Nuclear Operating Company, Inc. (SNC, the licensee) for license amendments to increase the maximum thermal power (MWt) at its Edwin I. Hatch Nuclear Plant, Units 1 and 2, from 2558 MWt to 2763 MWt, representing a power increase of 8 percent. This extended power uprate follows a 5 percent power uprate from the original licensing basis of 2436 MWt to 2558 MWt, which was implemented following the Unit 2 fall 1995 outage and the Unit 1 spring 1996 outage. As stated in the NRC staff's position paper on the Boiling-Water Reactor Extended Power Uprate Program dated February 8, 1996, the staff has the option of preparing an environmental impact statement (EIS) if

it believes a significant impact would result from the power uprate. The staff did not identify a significant impact related to SNC's request for an extended power uprate; therefore, the NRC staff is documenting its environmental review in an environmental assessment (EA). In accordance with the February 8, 1996, staff position paper, a draft EA and finding of no significant impact is being published in the **Federal Register** for a 30-day public comment period.

DATES: The comment period will expire 30 days after publication. Comments received after this date will be considered if practical to do so, but the Commission is able to assure consideration only for those comments received on or before September 28, 1998.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6–D59, Washington, DC 20555–0001. Written comments may also be delivered to Room 6–D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., on Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC, or the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

FOR FURTHER INFORMATION CONTACT: Leonard N. Olshan, Senior Project Manager, Office of Nuclear Reactor Regulation, Mail Stop O–14 H–25, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone at (301) 415–1419 or by e-mail at lno@nrc.gov.

SUPPLEMENTARY INFORMATION: The Commission is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5, issued to SNC for the operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located on the Altamaha River in Appling County, approximately 11 miles north of Baxley, Georgia. The Commission's draft Environmental Assessment And Finding of No Significant Impact related to the subject license amendments is provided herein.

Environmental Assessment

Description of Proposed Action

By letter dated August 8, 1997, supplemented by letters dated March 9, May 6, July 6, and July 31, 1998, SNC requested amendments to Facility Operating License Nos. DPR–57 and NFP–5 for the operation of the Edwin I. Hatch Nuclear Plant (Plant Hatch), Units 1 and 2, located on the Altamaha River in Appling County, approximately 11 miles north of Baxley, Georgia. On April 17, 1997, information concerning the SNC dose assessment for Plant Hatch was submitted in advance of the application for license amendments.

SNC has requested an increase in the maximum thermal power from 2558 MWt to 2763 MWt, which represents a power increase of 8 percent. This is considered an extended power uprate because it follows a 5 percent power uprate from the original licensing basis of 2436 MWt to 2558 MWt, which was implemented following the Unit 2 fall 1995 outage and the Unit 1 spring 1996 outage.

Need for the Proposed Action

SNC forecasts the increase in electrical generation to allow prudent planning for adding power capacity. Large base load plants are not required for several years. However, expected increases in customer demand will be met by either increasing the number of combustion turbines or purchasing electrical power from other sources. The proposed extended power uprate will provide increased reactor power, thus adding an additional 80 to 120 MW of reliable electrical generating capacity to the grid without major hardware modifications to the plant and will displace the need for two 50-megawatts electric gas turbines. Because of design and safety margins in the plant equipment, the proposed extended power uprate can be accomplished with relatively few modifications. Also, because Plant Hatch is already in operation, impacts of construction can be avoided. The cost of adding this nuclear generating capacity roughly equals the cost of constructing combustion turbines; however, the fuel cost of nuclear power is approximately one-tenth that of natural gas and the additional energy is expected to be produced for less than 1 cent per kilowatt hour. Furthermore, unlike fossil fuel plants, Plant Hatch does not routinely emit sulfur dioxide, nitrogen oxides, carbon dioxide, or other atmospheric pollutants that contribute to greenhouse gases or acid rain.

Environmental Impacts

At the time of the issuance of the operating licenses for Plant Hatch, the NRC staff noted that any activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement (FES), which was issued in March 1978. The original operating licenses for both Plant Hatch units allowed a maximum reactor power level of 2436 MWt. Plant Hatch has already received a 5 percent power uprate for each unit from the original licensing bases of 2436 MWt to 2558 MWt, which were implemented following the Unit 2 fall 1995 outage and the Unit 1 spring 1996 outage. An EA associated with the power uprate was published in the **Federal Register** on July 27, 1995 (60 FR 38593). SNC has submitted an environmental evaluation supporting the proposed extended power uprate action and provided a summary of its conclusions concerning both the radiological and nonradiological environmental impacts of the proposed action. Based on its independent analyses and the evaluation performed by the licensee, the staff concludes that the environmental impacts of the extended power uprate are well bounded or encompassed by previously evaluated environmental impacts and criteria established by the staff in the FES. Extended power uprate can be implemented at Plant Hatch without making extensive changes to plant systems that directly or indirectly interface with the environment. No changes to State permits are required. A summary of the nonradiological and radiological effects on the environment that may result from the proposed amendments is provided herein.

Nonradiological Impacts

Terrestrial Impacts

Impacts on Land Use: The proposed extended power uprate will not modify the land use at the site, as described in the FES. Neither construction of new facilities nor the modification of existing facilities, including buildings, access roads, parking facilities, laydown areas, and onsite transmission and distribution equipment, including power line rights-of-way, is needed to support the uprate or operation after uprate. Extended power uprate will not significantly affect material storage, including chemicals, fuels, and other materials stored in aboveground and/or underground storage.

Cooling Tower Impacts: In the FES, the staff concluded that operation of the Plant Hatch cooling towers would not be detrimental to either the land or the vegetation in the vicinity of the plant. Monitoring programs, including low altitude true and false color photography, have not revealed any negative effects attributable to salt deposition from cooling tower drift resulting from station operation to date. The proposed extended power uprate

will not increase the circulating water flow; therefore, no increase in cooling tower drift is expected.

The FES states that the climate at the site consists of mild, short winters (average monthly minimum temperature of approximately 52 °F); therefore, icing conditions are rare and the probability of icing on nearby roads is extremely low. Because circulating water flow will not increase as a result of extended power uprate, cooling tower drift will not increase and the impact of icing on trees, vegetation, and roads will not increase. Therefore, the conclusions of the FES relative to icing remain valid for the proposed extended power uprate.

A small increase in fogging potential due to operation of cooling towers was noted in the FES but was determined to be insignificant. The slight increase in heat load on the cooling towers from the proposed extended power uprate is expected to result in a very slight increase in the potential for fogging. However, this incremental increase is expected to be insignificant and will not change the conclusions in the FES.

After considering the small increase in heat load on the cooling towers, the staff concludes that the incremental effects of fog attributable to the proposed extended power uprate will be negligible and will continue to be bounded by the FES. Other cooling tower impacts, such as drift and icing, are not expected to change as a result of the proposed extended power uprate.

Transmission Facility Impacts: No changes in existing transmission line design and operation will result from the proposed extended power uprate. No new requirements or changes to onsite transmission equipment, operating transmission voltages, or offsite power systems will result from implementation of the proposed extended power uprate.

The rise in generator output associated with extended power uprate will produce a slight current and electromagnetic field (EMF) increase in the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, licensee-controlled boundary of the plant, and neither members of the public nor wildlife would be expected to be affected. Exposure to EMFs from the offsite transmission system is not expected to increase significantly and any such slight increases are not expected to change the staff's conclusion in the FES that there are no significant biological effects attributable to EMFs from high voltage transmission lines associated with Plant Hatch.

Because Plant Hatch transmission lines are designed and constructed in accordance with applicable shock prevention provisions of the National Electric Safety Code, the slight increase in current attributable to the proposed extended power uprate is not expected to change the staff's conclusions in the FES that adequate protection is provided against hazards from electrical shock.

Impacts on Terrestrial Biota: The proposed extended power uprate will not change the land use as evaluated in the FES and will not disturb the habitat of any terrestrial plant or animal species. The conclusions reached by the staff in the FES relative to impact on terrestrial ecology, including endangered and threatened plant and animal species, remain valid for the proposed extended power uprate.

Aquatic Impacts

Surface Water: Extended power uprate is accomplished by increasing the heat output of the reactor, thereby increasing steam flow to the turbine, for which increased feedwater flow is needed. For the proposed extended power uprate, the 22,500 gallons per minute (gpm) (50 cubic feet per second) average withdrawal rate for one unit of Plant Hatch assessed in the FES will remain unchanged. The increase in steam flow resulting from the extended power uprate does increase the duty on the main condenser and the resulting slight increase in evaporation from the cooling towers will be balanced by a decrease in blowdown discharge such that no increase in withdrawal is anticipated.

Groundwater: In the FES, the staff concluded that a minimal quantity of groundwater (327 gpm, 0.471 million gallons per day (gpd)) will be withdrawn from two wells for normal two-unit operation and this amount was not likely to significantly impact the regional aquifer. Groundwater use at Plant Hatch is governed by a permit issued by the Environmental Protection Division of the State of Georgia Department of Natural Resources, which authorizes withdrawal of 1.1 million gpd monthly average, and 0.550 million gpd annual average. Although the values allowed by the groundwater withdrawal permit are somewhat greater than the values evaluated in the FES, the typical groundwater withdrawal rate for two-unit operation is 0.167 million gpd (116 gpm), with a maximum value of 0.281 million gpd (195 gpm). The proposed extended power uprate will not result in a significant increase in the use of groundwater resources and will not significantly reduce the margin to limits contained in the permit issued by the State. The conclusions reached by the staff in the FES relative to groundwater use remain valid for the proposed extended power uprate.

Intake Impacts: The impacts of operation of the river water intakes include impingement of fish on the traveling screens at the intake structure and entrainment of phytoplankton, periphyton, drifting macroinvertebrates, and fish eggs and larvae. The losses of impinged and entrained organisms were assessed in the FES and were judged to be insignificant, compared to overall populations in the Altamaha River. Due to an increase in heat load on the cooling towers as a result of extended power uprate, evaporative losses will increase. In order to compensate for the increase in evaporative losses, cooling tower makeup will be increased slightly and cooling tower blowdown will be decreased by approximately 626 gpm. The additional incremental increase in makeup is considered insignificant and will not significantly increase the impacts of impingement and entrainment on aquatic biota in the Altamaha River beyond those addressed in the FES.

Discharge Impacts: Impacts of station operation resulting from the plant discharges include thermal and physical effects of cooling tower basin blowdown and the effects of chemical discharges from serial-numbered outfalls controlled by the National Pollutant Discharge Elimination System (NPDES) permit. The increased thermal discharges resulting from the proposed extended power uprate are expected to have the effect of increasing the discharge temperature of cooling water blowdown such that the temperature increase in the Altamaha River after mixing would be less than 0.1 °F.

As described above, cooling tower blowdown is expected to decrease by 626 gpm; therefore, the extended power uprate will not result in increased impacts due to scour on aquatic macrobenthic organisms or to increase turbidity in the Altamaha River in the vicinity of the plant discharge.

Chemical usage and subsequent discharge to the environment are not expected to change significantly as a result of implementing the proposed extended power uprate. Cycles of concentration at which the cooling towers operate will not change and no changes in the cooling tower chemistry program will result from the extended power uprate. Finally, no changes to the sanitary waste system or to the parameters regulated by the NPDES permit are needed to accomplish the extended power uprate. Therefore, the conclusions in the FES regarding chemical discharges remain valid.

Socioeconomic Impacts

Physical Impacts: The staff has considered the potential for direct physical impacts resulting from the proposed extended power uprate. The proposed extended power uprate will be accomplished primarily by changes in station operation, resulting in very few modifications to the station facility. These limited modifications can be accomplished without physical changes to transmission corridors, access roads, other offsite facilities, or additional project-related transportation of goods or materials. Therefore, no significant additional construction disturbances causing noise, odors, vehicle exhaust, dust, vibration, or shock from blasting are expected and the conclusions in the FES remain valid.

Social and Economic Impacts: The staff has reviewed information provided by the licensee regarding socioeconomic impacts. SNC is a major employer in the community and the largest single contributor to the local tax base. SNC personnel also contribute to the tax base by payment of sales and property tax and many are involved in volunteer work within the community. The proposed extended power uprate will not significantly affect the size of the Plant Hatch workforce and will not have a material effect upon the labor force required for future outages. Because the plant modifications needed to implement the extended power uprate will be minor, any increase in sales tax and additional revenue to local and national business will be negligible relative to the large tax revenues generated by Plant Hatch. It is expected that improving the economic performance of Plant Hatch through cost reductions and lower total bus bar costs per kWh will enhance the value of Plant Hatch as a generating asset and lower the probability of early plant retirement. Early plant retirement would have a significant negative impact upon the local economy and the community as a whole. The ability of the local economy to provide substitute tax revenues and similar employment opportunities for SNC employees is limited and serious reductions in public services, employment, income, business revenues, and property values could result from early plant retirement, although these reductions could be mitigated by decommissioning activities in the short-term.

The staff has also evaluated the environmental impact of the proposed extended power uprate on aesthetic resources and lands with historical or archaeological significance and concludes that the proposed action will not change aesthetic resources or affect lands with historical or archeological significance.

Summary

In summary, the proposed extended power uprate will not result in a significant change in nonradiological plant effluents or terrestrial or socioeconomic impacts and will have no other nonradiological environmental impact.

Radiological Impacts

Radioactive Waste Treatment

Plant Hatch uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid waste that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20 and Appendix I to Part 50. These radioactive waste treatment systems are discussed in the FES. The proposed extended power uprate will not affect the environmental monitoring of any of these waste streams or the radiological monitoring requirements contained in licensing basis documents. The proposed extended power uprate does not introduce any new or different radiological release pathways and does not increase the probability of an operator error or equipment malfunction that would result in an uncontrolled radioactive release.

Gaseous Radioactive Waste

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the site environs, including small quantities of noble gases, halogens, particulates, and tritium, such that routine offsite releases from station operation are below the limits in 10 CFR Part 20 and Appendix I to Part 50 (10 CFR Part 20 includes the requirements of 40 CFR Part 190). The gaseous waste management systems include the offgas system and various building ventilation systems. Assuming noble gas generation rates and the radioactivity contribution from halogens, particulates, and tritium are approximately proportional to the power increase (8 percent), a small increase in gaseous effluents due to extended power uprate will occur. The staff has evaluated information provided by the licensee and concludes that the estimated dose values will still be below Appendix I requirements after the extended power uprate and the dose impact will be a small increase (less than 8 percent) for the gaseous pathway compared to the present analysis of record for the plant.

Liquid Radioactive Waste

The liquid radwaste system is designed to process, and recycle to the extent practicable, the liquid waste collected such that annual radiation doses to individuals from each unit resulting from routine liquid waste discharges are maintained below the guidelines in 10 CFR Part 20 and 10 CFR Part 50, Appendix I. Liquid effluents are continuously monitored and discharges are terminated if effluents exceed preset radioactivity levels. Extended power uprate conditions will not result in significant increases in the volume of liquid from the various sources to the liquid radwaste system. The single largest source of liquid and wet solid waste is the backwash of the condensate demineralizers. With extended power uprate, the average time between backwash and precoat will be reduced slightly. The floor drain collection subsystem and the waste collection subsystem both receive periodic inputs from a variety of sources; however, neither subsystem is expected to experience a significant increase in the total volume of liquid radwaste due to operation at extended power uprate conditions.

During normal operation, treated high-purity radwastes are normally routed to condensate storage for reuse. Treated floor drain wastes can also be routed to condensate storage, to the extent practical, consistent with reactor water inventory and reactor water quality requirements. Treated floor drain and chemical wastes are discharged into the cooling tower blowdown discharge pipe after being sampled to ensure discharge pipe concentrations after dilution are within applicable limits.

The activated corrosion products in liquid wastes are expected to increase proportionally to extended power uprate (approximately 8 percent). However, the total volume of processed waste is not expected to increase appreciably, since the only significant increase is due to the more frequent backwashes of the condensate demineralizers. The staff concludes that information submitted by the licensee shows that there will be no significant dose increase in the liquid pathway resulting from the proposed extended power uprate.

Solid Radioactive Waste

The solid radioactive radwaste system collects, monitors, processes, packages, and provides temporary storage

facilities for radioactive solid wastes prior to offsite shipment and permanent disposal. Plant Hatch has implemented procedures to assure that the processing and packaging of solid radioactive waste is accomplished in compliance with the Commission's regulations.

Wet Wastes: Wet wastes, consisting primarily of spent demineralizer resins and filter sludges, are accumulated in phase separators and waste sludge tanks, which serve as storage and batching tanks for the wet solid radwaste system.

The largest volume contributors to radioactive solid waste are the spent resin and filter sludges from the process wastes. Equipment wastes from operation and maintenance activities, chemical wastes, and reactor system wastes also contribute to solid waste generation. Extended power uprate conditions may involve a slight increase in the process wastes generated from the operation of the reactor cleanup filter demineralizers, fuel pool filter demineralizers, and the condensate filter demineralizers. More frequent reactor water cleanup backwashes are expected to occur under extended power uprate conditions due to water chemistry limits. Extended power uprate will not involve changes in either reactor water cleanup flow rates or filter performance.

The principal effect of extended power uprate upon the condensate demineralizer system is increased condensate flow and, consequently, the condensate vessel differential pressure limit being reached more frequently, resulting in reduced run times. Without any modification, the spent resin generation from the condensate demineralizers would be expected to increase. However, to offset this, Plant Hatch is adopting the use of pleated filter elements in the demineralizer vessels. Use of pleated filters will double the run times to about 50 days using current demineralizer flow rates. Also, use of pleated filters allows precoating with less resin, resulting in a 50 to 60 percent reduction in resin usage. In conjunction with the adoption of pleated filters, Plant Hatch is installing an air surge system, which increases the energy of the backwash, enhancing the ability to flush material out of the filters and extending the life of demineralizer filters. These modifications will serve to minimize the amount of wet radwaste. The staff concludes that implementation of the proposed extended power uprate is not likely to have a significant impact on the volume or activity of wet radioactive solid wastes at Plant Hatch.

Dry Wastes: Dry wastes consist of air filters, miscellaneous paper and rags from contaminated areas, contaminated clothing, tools and equipment parts that cannot be effectively decontaminated, and solid laboratory wastes. The activity of much of this waste is low enough to permit manual handling. Dry wastes are collected in containers located throughout the plant, compacted as practicable, and then sealed and removed to a controlled-access enclosed area for temporary storage. Because of its low activity, dry waste can be stored until enough is accumulated to permit economical transportation to an offsite processing facility or a burial ground for final disposal. The staff concludes that implementation of the proposed extended power uprate should not have a significant impact on the volume or activity of the dry solid radioactive wastes at Plant Hatch.

Irradiated Reactor Components: This waste consists primarily of spent reactor control rod blades, fuel channels, incore ion chambers, and large pieces of equipment. Because of the high activation and contamination levels, reactor equipment waste is stored in the spent fuel storage pool to allow for sufficient radioactive decay before removal to inplant or offsite storage and final disposal in shielded containers or casks. Because of the mitigating effects of extended burnup and increased U-235 burnup, implementing the extended power uprate is not likely to have a significant impact on the number of irradiated reactor components discharged from the reactor.

Dose Consideration

Inplant Radiation: Increasing the rated power at Plant Hatch may result in a potential increase in radiation sources in the reactor coolant system. The increased flow of reactor coolant and feedwater needed for the increased power level may result in changing patterns of erosion and corrosion in various locations in the reactor coolant system. This may result in the shifting of corrosion products throughout the reactor coolant system and a corresponding shift in dose rates in the vicinity of reactor coolant piping and components. In addition, the increased core average flux may result in an increase in the concentration of N–16 and activated corrosion products in the reactor coolant system.

The licensee has implemented several programs in the last few years that will serve to counteract any potential increases in dose rates resulting from a power uprate. The licensee initiated a zinc injection program in 1990 and a cobalt reduction program in 1993. These programs, which are intended to reduce the level of activated corrosion products in the reactor coolant system and to inhibit the further buildup of corrosion products in reactor coolant system piping, resulted in a greater than 400 percent reduction in the reactor coolant cobalt-60 and zinc-65 concentrations between 1993 and 1997. The licensee also performed chemical decontaminations on Unit 1 in 1991 and 1996 to reduce radiation fields in the reactor auxiliary systems. As a result of the chemical decontaminations and other initiatives described above, dose rates surrounding certain reactor coolant system components were reduced by as much as 40 percent.

To counteract any potential increases in plant doses due to the increase in N–16 levels in the reactor coolant from a power uprate, the licensee performed plant shielding reviews of potentially affected plant areas. Those target areas identified were modified to maintain radiation levels within acceptable levels.

Weekly surveillance data collected since 1990 indicates that the actual reactor water fission and corrosion product activity levels at Plant Hatch are approximately 5 percent of the activity levels assumed in the Plant Hatch original licensing basis. In addition, the average collective dose per reactor at Plant Hatch for the past 5 years has been well under the 500 person-rem value contained in the FES. The 3-year average collective dose per reactor at Plant Hatch has been trending downwards since 1990. In recent years (1991–95), occupational doses have averaged about 0.7 person-cSv (person-rem) per megawatt-year, which is consistent with doses at other boiling water reactors.

On the basis of the preceding information, the staff concludes that the expected annual collective dose for Plant Hatch, following the proposed extended power uprate, will still be bounded by the dose estimate contained in the FES.

Offsite Doses: The staff has reviewed SNC's offsite dose analysis that was provided to demonstrate that Plant Hatch can meet the offsite effluent release requirements of as low as reasonably achievable. The staff has also reviewed actual liquid and gaseous effluent release data, in conjunction with current dispersion/deposition data and periodic land/population/biota usage survey information. It is not likely that the doses to offsite individuals due to normal operational liquid effluent releases will exceed the estimated liquid effluent dose values currently outlined in the final safety analysis reports

(FSARs) for Plant Hatch. The doses from airborne effluents are calculated to be increased from the calculated values in the FSARs by about 2.4 percent for the total body and 7.3 percent for the child's thyroid but the relevant dose criteria will be met. The staff concludes that the estimated doses from both the liquid and gaseous release pathways resulting from extended power uprate conditions are well within the design objectives specified in 10 CFR Part 50, Appendix I, and the limits of 10 CFR Part 20.

Accident Consideration

The staff has reviewed the licensee's analyses and has performed confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. The staff concludes that the proposed extended power uprate will not significantly increase the probability or consequences of accidents and will not result in a significant increase in the radiological environmental impact of Plant Hatch under accident conditions. The results of the staff's calculations will be presented in the safety evaluation to be issued with the license amendment.

Fuel Cycle and Transportation Impacts

Extended power uprate is expected to involve an increase in the bundle average enrichment of the fuel. The environmental impacts of the fuel cycle and of transportation of fuel and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycles and concluded that there is no significant change in environmental impact for fuel cycles with uranium enrichments up to 5 weight percent U–235 and burnups less than 60 GWd/MTU from the parameters evaluated in Tables S–3 and S–4. Because the fuel enrichment for the extended power uprate will not exceed 5 weight percent U–235 and the rod average discharge exposure will not exceed 60 GWd/MTU, the environmental impacts of the proposed extended power uprate will remain bounded by these conclusions and are not significant.

Summary

In summary, the proposed extended power uprate will not significantly increase the probability or consequences of accidents, will not introduce any new radiological release pathways, will not result in a significant increase in occupational or public radiation exposure, and will not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

Alternatives to Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. However, as an alternative to the proposed action, the staff did consider denial of the proposed action. Denial of the proposed action would result in no change in the current environmental impacts of plant operation but would restrict operation to the currently licensed power level. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Edwin I. Hatch Nuclear Plant, Units 1 and 2.

Basis and Conclusions for Not Preparing an EIS

The staff has reviewed the proposed extended power uprate for the Edwin I. Hatch Nuclear Plant, Units 1 and 2, relative to the requirements set forth in 10 CFR Part 51. Based on its environmental assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment would not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an EIS for the proposed amendment but to prepare this draft environmental assessment and finding of no significant impact.

For further details with respect to the proposed action, see the licensee's letter dated August 8, 1997, as supplemented by letters dated March 9, May 6, July 6, and July 31, 1998, and the information submitted by letter dated April 17, 1997, in advance of the licensee's application, all of which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Maryland, this 21st day of August 1998.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22980 Filed 8–26–98; 8:45 am]

BILLING CODE 7950–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on August 4, 1998 (63 FR 41605). Individual authorities established or revoked under Schedules A and B and established under Schedule C between July 1, 1998, and July 31, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during July 1998.

Schedule B

No Schedule B authorities were established or revoked during July 1998.

Schedule C

The following Schedule C authorities were established during July 1998:

Council on Environmental Quality

Staff Assistant to the Chair, Council on Economic Quality. Effective July 31, 1998.

Department of Agriculture

Special Assistant to the Administrator, Rural Housing Service. Effective July 2, 1998.

Special Assistant to the Administrator, Agricultural Marketing Service. Effective July 7, 1998.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective July 14, 1998.

Staff Assistant to the Confidential Assistant, Office of the Secretary. Effective July 16, 1998.

Staff Assistant to the Administrator, Risk Management Agency. Effective July 16, 1998.

Staff Assistant to the Director, Office of Communications. Effective July 27, 1998.

Department of Commerce

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective July 24, 1998.

Senior Advisor to the Assistant Secretary for Trade Development, International Trade Administration. Effective July 31, 1998.

Department of Education

Confidential Assistant to the Deputy Assistant Secretary, Regional Services. Effective July 9, 1998.

Special Assistant to the Deputy Assistant Secretary for Regional and Community Services. Effective July 9, 1998.

Confidential Assistant to the Deputy Assistant Secretary for Regional and Community Services. Effective July 14, 1998.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective July 16, 1998.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective July 17, 1998.

Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective July 24, 1998.

Special Assistant to the Director Scheduling and Briefing Staff. Effective July 27, 1998.

Confidential Assistant to the Deputy Secretary. Effective July 31, 1998.

Department of Energy

Senior Policy Advisor to the Secretary of Energy. Effective July 16, 1998.

Department of Health and Human Services

Special Assistant Community Outreach and Liaison to the Administrator, Substance Abuse and Mental Health Services Administration. Effective July 2, 1998.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective July 15, 1998.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective July 15, 1998.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Administration. Effective July 15, 1998.

Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs. Effective July 24, 1998.

Department of the Interior

Special Assistant (Speech Writer) to the Director, Office of Communications. Effective July 9, 1998.

Department of Justice

Special Assistant to the Chief of Staff. Effective July 2, 1998.

Staff Assistant to the Attorney General. Effective July 31, 1998.

Department of Labor

Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective July 15, 1998.

Chief of Staff to the Assistant Secretary for Policy. Effective July 24, 1998.

Department of State

Coordinator, Office of Business Affairs to the Under Secretary for Economic, Business and Agricultural Affairs. Effective July 28, 1998.

Department of Transportation

Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective July 2, 1998.

Senior Intergovernmental Liaison Officer to the Director, Office of Intergovernmental Affairs. Effective July 16, 1998.

Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs. Effective July 31, 1998.

Department of the Treasury

Special Assistant for Scheduling to the Director, Scheduling and Advance. Effective July 2, 1998.

Department of Veterans Affairs

Special Assistant to the Secretary of Veterans Affairs. Effective July 24, 1998.

Environmental Protection Agency

Special Assistant to the Associate Administrator for Communications, Education and Media Relations. Effective July 2, 1998.

Special Assistant to the Associate Administrator for Communications, Education and Media Relations. Effective July 13, 1998.

Federal Emergency Management Agency

Special Assistant for Northridge Transition to the Deputy Chief of Staff, Office of the Director. Effective July 31, 1998.

General Services Administration

Deputy Regional Administrator, Rocky Mountain Region (Denver, CO) to the Regional Administrator. Effective July 27, 1998.

National Aeronautics and Space Administration

Executive Assistant to the Nasa Administrator. Effective July 24, 1998.

Legislative Affairs Specialist to the Associate Administrator for Legislative Affairs. Effective July 27, 1998.

National Endowment for the Humanities

Assistant Director of Government Affairs to the Director of Governmental Affairs. Effective July 7, 1998.

Director of Governmental Affairs to the Chief of Staff. Effective July 16, 1998.

Office of Management and Budget

Legislative Analyst to the Associate Director for Legislative Affairs. Effective July 7, 1998.

Public Affairs Specialist to the Associate Director for Communications. Effective July 7, 1998.

Legislative Assistant to the Associate Director, Legislative Affairs. Effective July 24, 1998.

Securities and Exchange Commission

Director of Legislative Affairs to the Chairman. Effective July 10, 1998.

Secretary to the General Counsel. Effective July 16, 1998.

Small Business Administration

Director of Community Empowerment and One Stop Capital Shops to the Associate Deputy Administrator for Entrepreneurial Development. Effective July 7, 1998.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development. Effective July 10, 1998.

Associate Administrator for Field Operations to the Administrator. Effective July 10, 1998.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development. Effective July 10, 1998.

Regional Administrator, Region VI, Dallas, TX to the Project Director for Field Operations. Effective July 16, 1998.

United States Information Agency

White House Liaison to the Chief of Staff, Office of the Director. Effective July 31, 1998.

Special Advisor to the Associate Director, Bureau of Information. Effective July 31, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–23023 Filed 8–26–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 2:00 p.m., September 9, 1998.

PLACE: Alan K. Campbell Auditorium, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The Campbell Auditorium is located on the ground floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: This meeting will consist of an awards ceremony. The winners of the 1998 John N. Sturdivant National Partnership Award will be announced; and the winners will receive their awards. The John N. Sturdivant National Partnership Award is given in recognition of outstanding labor-management partnership activities.

CONTACT PERSON FOR MORE INFORMATION: Rose M. Gwin, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–23022 Filed 8–26–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of a Proposed New Routine Use

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a proposed new routine use.

SUMMARY: This notice proposes to add a new routine use to an existing Central System of Records.

DATES: This proposed routine use will be effective without further notice October 6, 1998, unless comments received dictate otherwise.

ADDRESSES: Send written comments to Office of Personnel Management, Attn: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW, Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: OPM finds that it is in the Government's interest to add a new routine use to OPM's Central System of Records, OPM/Central–1, Civil Service Retirement and Insurance Records. This system of records is applicable to a number of OPM managed benefit programs, including the Federal Employees Health Benefits (FEHB) Program, the Federal Employees Group Life Insurance (FEGLI) Program, and two of the Federal Government's retirement programs, the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). This new routine use will allow OPM to release information from OPM/Central–1, Civil Service Retirement and Insurance Records, where OPM has determined that the use of that information is compatible with proper disclosure and will directly benefit Federal employees, annuitants or their dependents, survivors, and beneficiaries. For example, OPM utilizes the services of contractors to send out annual income tax information to annuitants, to distribute to annuitants annual rate and benefit information regarding the FEHB Program, and to distribute open season and customer feedback information involving the FEGLI Program. Moreover, in certain circumstances, a private organization may undertake a project that results in Federal employees, annuitants or their dependents, survivors and beneficiaries obtaining important and timely information that is beneficial to that audience. Such a situation was anticipated by Congress in October 1991 as part of the debate on the legislation that would include OPM's Fiscal Year 1992 appropriation. In the Conference Report accompanying H.R. 2622, the conferees directed OPM to seriously consider requests from certain private organizations for ''blind mailings'' in which OPM would facilitate these organizations getting information to Federal annuitants and employees without the organizations ever actually seeing the addresses of the proposed recipients. A contractor to the private organization would then require access to certain OPM information in order to make the blind mailing possible. Any release of such information must also comply with section 626 of the Treasury, Postal, and General Government Appropriations Act for Fiscal Year 1998, P.L. 105–61, and any such successor law. Section 626 provides that none of the funds appropriated by that Act or any other Act may be used to provide a Federal employee's home address to any labor organization except where the employee has authorized such disclosure or that disclosure has been ordered by a court of competent jurisdiction. OPM shall exercise its discretion under the new routine use in accordance with section 626, or any such successor law.

The new routine use is added to the following Central System of Records: OPM/Central–1, Civil Service Retirement and Insurance Records.

For Non-Federal Personnel—To disclose information to private organizations, contractors, grantees, volunteers, or other non-Federal personnel performing or working on a project, contract, service, grant, cooperative agreement, or job for, to the benefit of, or consistent with the interests of the Federal Government when OPM has determined that the use of that information is compatible with proper disclosure and will benefit Federal employees, annuitants or their dependents, survivors, and beneficiaries.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–23011 Filed 8–26–98; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted

the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application for Survivor Insurance Annuities.

(2) *Form(s) submitted:* AA–17, AA–17b, AA–18, AA–19, AA–19a, AA–20.

(3) *OMB Number:* 3220–0030.

(4) *Expiration date of current OMB clearance:* 10/31/1998.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 5,765.

(8) *Total annual responses:* 5,765.

(9) *Total annual reporting hours:* 2,864.

(10) *Collection description:* Under Section 2(d) of the Railroad Retirement Act, monthly survivor annuities are payable to surviving widow(ers), parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(ers) and grandchildren of deceased railroad employees. The collection obtains information needed by the RRB for determining entitlement to and amount of the annuity applied for.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–23050 Filed 8–26–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23396; 813–176]

Hambrecht & Quist Employee Venture Fund, L.P., et at.; Notice of Application

August 21, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (''Act'') exempting the applicants from all provisions of the Act, except section 9, sections 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)) and 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnership formed for the benefit of key employees of Hambrecht & Quist Group (''H&Q Group'') and its affiliates from certain provisions of the Act. Each partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

APPLICANTS: Hambrecht & Quist Employee Venture Fund, L.P. (''Initial Partnership''), and H&Q Group, on behalf of other partnerships or other investment vehicles that may be formed in the future (''Other Partnerships'') (together with the Initial Partnership, the ''Partnerships'').

FILING DATES: The application was filed on October 28, 1997. Applicants have agreed to file an amendment to the application, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 15, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Bush Street, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Christine Greenlees, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. H&Q Group, a holding company, operates as an investment bank through its subsidiaries. Its principal wholly-owned subsidiary is Hambrecht & Quist LLC, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'') and an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). H&Q Group and its affiliates, as defined in rule 12b–2 of the Exchange Act (''Affiliates''), are referred to this notice collectively as ''H&Q'' and individually as an ''H&Q entity.''

2. H&Q proposes to offer various investment programs for the benefit of certain key employees. The programs may be structured as different Partnerships or as separate plans within the same Partnership. Each Partnership will be a limited partnership or limited liability company formed as an ''employees'' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of H&Q as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. H&Q Plan Management, LLC, a Delaware limited liability company, will act as the general partner of the Initial Partnership (together with any Affiliate that controls, is controlled by or is under common control with H&Q Group and that acts as a Partnership's general partner, the ''General Partner''). The General Partner will manage, operate, and control each of the Partnerships; however, the General Partner will be authorized to delegate management responsibility to H&Q or to a committee of H&Q employees. An H&Q entity will act as the investment adviser to a Partnership and will be registered as an investment adviser under the Advisers Act.

4. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), or Regulation D under the Securities Act, and will be sold without a sales load only to ''Eligible Employees'' and ''Qualified Participants,'' in each case as defined below (collectively, ''Participants''). Prior to offering Interests to an Eligible

Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (i) an individual who is a current or former employee, officer, director, or ''Consultant'' of H&Q and, except for certain individuals who manage the day-to-day affairs of the Partnership in question (''Managing Employees''), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (ii) an entity that is a current or former ''Consultant'' of H&Q and meets the standards of an accredited investor under rule 501(a) of Regulation D.[1] Eligible Employees will be experienced professionals in the investment banking and securities businesses, or in related administrative, financial, accounting, legal, or operational activities.

5. Managing Employees, who also will qualify as Eligible Employees, will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the Limited Partners of the Partnership, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions by the General Partner. Each Managing Employee will (a) be closely involved with and knowledgeable with respect to the Partnership's affairs, (b) be an officer or employee of H&Q, and (c) have reportable income from all sources (including any profit shares and bonuses) in the calendar year immediately preceding the Employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the Employee invests in a Partnership.

6. A Qualified Participant (a) is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee, and (b) if the individual or entity is purchasing an Interest from a Partner or directly from the Partnership, comes within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D.[2] An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A ''Qualified Entity'' is: (a) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee;[3] or (c) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, in a limited partnership agreement (the ''Limited Partnership Agreement''), which will be furnished at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, deductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership as a Partner unless the person is am Eligible Employee, a Qualified Participant of an Eligible Employee, or an H&Q entity.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (a) the Eligible Employee's relationship with H&Q is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of H&Q; or (c) the Eligible Employee voluntarily resigns from employment with H&Q. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), and (b) the fair market value of the Interest as determined at the time of repurchase or cancellation by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Limited Partnership Agreement, a Partnership will be permitted to enter into transactions involving (a) an H&Q entity, (b) a portfolio company, (c) any Partner or any person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with H&Q and over which an H&Q entity will exercise investment discretion (''Third Party Fund''), or (e) any partner or other investor of a Third Party Fund that is not affiliated with H&Q (a ''Third Party Investor''). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any H&Q entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. An H&Q entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are ''usual and customary.'' Fees or other compensation will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the

[1] A ''Consultant'' is a person or entity whom H&Q has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with H&Q and H&Q employees.

[2] ''Partner'' means any partner of a Partnership, including the General Partner.

[3] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Qualified Entities'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between H&Q and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an ''accredited investor'' under rule 501(a)(6) of Regulation D and who will have access to the General Partner or H&Q.

Partnership and the unaffiliated third parties, including Third Party Funds. H&Q entities, including the General Partner, also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employee's security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) exempting the Partnerships from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) an H&Q entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnerships; (b) any Partnership to invest in or engage in any transaction with any H&Q entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any H&Q entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any H&Q entity or Third Party Fund is or will become otherwise affiliated; and (c) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with a Partnership or any company controlled by the Partnership.

4. Applicants state than an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with H&Q. Applicants also state that, as professionals employed in the investment banking and securities businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and H&Q will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with H&Q, H&Q's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be organized for the benefit of Eligible Employees as an incentive for them to remain with H&Q and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with H&Q are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in coinvestment opportunities because they believe that (a) the resources of H&Q enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by H&Q will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by H&Q and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that H&Q will be acutely concerned with its relationship with the investors in the Partnership, and the fact that senior officers and directors of H&Q entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by an H&Q entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for a Third Party Fund to require that H&Q invest its own capital in Third Party Fund investments, and that the H&Q investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third

Party Fund is fundamentally different from a Partnership's relationship to H&Q. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by H&Q in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships and a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit an H&Q entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that is charged or received by an H&Q entity will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because H&Q does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to an H&Q entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the members of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the members of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the members of the Partnership take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit an H&Q entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between H&Q and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the members of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, the Partnership's organizational documents, and the Partnership's reports to its Partners. In addition, the General

Partner will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[4]

2. In connection with the Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning or rule 17d–1 in which the Partnership and a Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) H&Q; (c) an officer or director of H&Q; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit to prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of each Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to the Participants, and agree that all such records will be subject to examination by the SEC and its staff.[5]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his or its federal and state income tax returns, and a report of the investment activities of the Partnership during that year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by an H&Q director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23072 Filed 8–26–98; 8:45 am]

BILLING CODE 8010–01–M

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26908]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 21, 1998.

Notice is hereby given that the following filing(s) have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by *September 15, 1998,* to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After *September 15, 1998*, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Metropolitan Edison Company

[70–9329]

Metropolitan Edison Company (''Met-Ed''), 2800 Pottsville Pike, Reading, Pennsylvania 19605, a public utility subsidiary of General Public Utilities Corporation (''GPU''), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 45 and 54 under the Act.

Met-Ed proposes to organize a special purpose subsidiary (Met-Ed Capital Trust) as a business trust under Delaware law, which will issue and sell from time to time in one or more series through December 31, 2000, up to $125 million aggregate liquidation value of preferred beneficial interests, in the form of trust securities (''Trust Securities'').[1] Each Trust Security will represent a cumulative preferred security (''Preferred Securities'') of a Delaware limited partnership (''Met-Ed Capital L.P.''), a special purpose indirect subsidiary of Met-Ed. Met-Ed also proposes to form a special purpose Delaware corporation (''Investment Sub''), to act as general partner of Met-Ed Capital L.P.

Met-Ed Capital Trust will acquire the Preferred Securities and issue the Trust Securities evidencing the Preferred Securities. Met-Ed Capital L.P. will issue one or more series of Preferred Securities and lend the proceeds thereof, plus a capital contribution (in an amount not to exceed $5 million) made by Met-Ed in Met-Ed Capital L.P., to Met-Ed, the loan will be evidenced by the ''Subordinated Debentures'' (defined below) issued by Met-Ed.

Met-Ed will acquire all of the common stock of Investment Sub for a nominal consideration and will capitalize Investment Sub with: (i) A capital contribution in the amount of up to $5 million, and (ii) a demand promissory note in the principal amount of up to $13 million, that will bear interest, compounded semi-annually at Citibank's N.A. base rate as announced from time to time.

Investment Sub will acquire all of the general partner interests in Met-Ed Capital L.P. for up to $5 million (''L.P. Equity Contribution''). Met-Ed Capital Trust will apply the proceeds from the sale of the Trust Securities to purchase the Preferred Securities. Met-Ed Capital L.P. will, in turn, use the proceeds received from the sale of the Preferred Securities, together with the L.P. Equity Contribution, to purchase Met-Ed's subordinated debentures (''Subordinated Debenture(s)'').

Met-Ed will also guarantee (''Guarantee'') the payment by Met-Ed Capital L.P. of: (1) Accrued but unpaid distributions on the Preferred Securities, if and to the extent Met-Ed Capital L.P. has declared these distributions out of funds legally available therefor; (2) the redemption price for any redemption of the Preferred Securities; (3) the aggregate liquidation preference on the Preferred Securities, including all accrued but unpaid distributions, whether or not declared; and (4) certain additional amounts.

Met-Ed Capital Trust's activities will be limited to the issuance and sale of Trust Securities and applying the proceeds to purchase Preferred Securities. Met-Ed Capital Trust's constituent instruments will not include any interest or distribution coverage or capitalization ratio restrictions on its ability to issue and sell Trust Securities as each issuance will be supported by a Subordinated Debenture and Guarantee. Therefore, Met-Ed states that these restrictions would not be relevant or necessary for Met-Ed Capital Trust to maintain an appropriate capital structure. Moreover, the issuance of Subordinated Debentures by Met-Ed will be subject to Met-Ed's Articles of Incorporation, which limits, without the consent of the holders of a majority of Met-Ed's outstanding Cumulative Preferred Stock, the amount of unsecured indebtedness which Met-Ed may have outstanding at any one time to 20% of the aggregate of the total outstanding principal amount of all bonds and other securities representing secured indebtedness issued or assumed by Met-Ed plus Met-Ed's capital stock, premiums, and surplus of Met-Ed as stated on its books of account. Met-Ed Capital Trust's constituent instruments will further state that Met-Ed Capital will be responsible for all liabilities and obligations of Met-Ed Capital Trust.

Each Subordinated Debenture will have an initial term of up to 49 years. Prior to maturity, Met-Ed will pay only interest on the Subordinated Debentures at a rate equal to the distribution rate on the Preferred Securities. The interest payments will constitute Met-Ed Capital Trust's only income and will be used by it to pay distributions on the Trust Securities, with any excess being distributed indirectly to Met-Ed as a distribution on Met-Ed's investment in Met-Ed Capital L.P., thereby reducing the interest cost on the Subordinated Debentures.

Distributions on the Trust Securities will be made not less than semi-annually, and will be cumulative and must be made to the extent that Met-Ed Capital Trust has legally available funds and cash sufficient for these purposes. However, Met-Ed will have the right to defer payment of interest on the Subordinated Debentures for up to five years in which event Met-Ed Capital Trust may similarly defer payment of distributions on the Trust Securities, but in no event may distributions be deferred beyond the maturity date of the Subordinated Debentures. The distribution rates, payment dates, redemption and other similar provisions of each series of Trust Securities will be identical to the interest rates, payment dates, redemption and other provisions of the Subordinated Debentures issued by Met-Ed.

Each Subordinated Debenture and related Guarantee will be subordinate to all other existing and future ''Senior Indebtedness,'' as defined below, of Met-Ed and will have no cross-default provisions with respect to other Met-Ed indebtedeness—i.e., a default under any other outstanding Met-Ed indebtedness will not result in a default under the Subordinated Debenture or the Guarantee. However, Met-Ed may not declare and pay dividends on, or redeem or retire, its outstanding Cumulative Preferred Stock or Common Stock unless all payments then due (whether or not previously deferred) under the Subordinated Debentures and the Guarantees have been made. ''Senior Indebtedness'' consists of (i) the principal of and premium (if any) in respect of (A) indebtedness of Met-Ed for money borrowed and (B) indebtedness evidenced by securities, debentures, bonds or other similar instruments (including purchase money obligations) for payment of which Met-Ed is responsible or liable; (ii) all capital lease obligations of Met-Ed; (iii) all obligations of Met-Ed issued or assumed as the deferred purchase price of property, all conditional sale obligations of Met-Ed and all obligations of Met-Ed under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) certain obligations of Met-Ed for the reimbursement of any obligor on any letter of credit, banker's acceptance, security purchase facility or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of other persons for the payment of which Met-Ed is responsible or liable as obligor, guarantor or otherwise; and (vi) all obligations of the types referred to in clauses (i) through (v) of other persons secured by any lien on any property or asset of Met-Ed (whether or not the

[1] The Trust Securities' liquidation value per interest is to be determined.

obligation is assumed by Met-Ed), except for any indebtedness that is by its terms subordinated to or *pari passu* with the Subordinated Debentures.

It is expected that Met-Ed's interest payments on the Subordinated Debentures will be deductible for income tax purposes and that Met-Ed Capital Trust will be treated as a trust for federal income tax purposes. Consequently, distributions from Met-Ed Capital Trust to the holders of Trust Securities, and indirectly to Met-Ed, will be deemed to constitute distributions of the interest income received by Met-Ed Capital Trust on the Subordinated Debentures. Consequently, the holders of the Trust Securities and Met-Ed will not be entitled to any ''dividend received deduction'' under the Internal Revenue Code with respect to the distributions.

A series of the Trust Securities will be subject to mandatory redemption upon redemption of the corresponding series of the Preferred Securities. A series of Preferred Securities will be subject to mandatory redemption upon the maturity or prior redemption of the corresponding series of the Subordinated Debentures, but will not be subject to any mandatory sinking fund. A series of Preferred Securities may also be redeemable at the option of Met-Ed at a price equal to their liquidation value plus any accrued and unpaid distributions plus any premium negotiated in connection with the marketing of the Trust Securities, (i) at any time after a specified no-call period (if any) which could be up to the life of the issuance, or (ii) in the event that (I) Met-Ed Capital L.P. is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, or (II) Met-Ed Capital L.P. or Met-Ed Capital Trust is subject to federal income tax with respect to interest received on the Subordinated Debentures, or (III) it is determined that the interest payments by Met-Ed on the Subordinated Debentures are not deductible for federal income tax purposes or (IV) Met-Ed Capital L.P. is subject to more than a *de minimis* amount of other taxes, duties or other governmental charges, or (V) Met-Ed Capital L.P. becomes subject to regulation as an ''investment company'' under the Investment Company Act of 1940. Upon occurrence of any of the events set forth in clause (ii) above, Met-Ed Capital L.P. and Met-Ed Capital Trust could be dissolved and the Subordinated Debentures distributed directly to the holders of the Trust Securities and to Met-Ed on a pro rata basis, resulting in direct ownership of the subordinated Debentures by the holders of the Trust Securities. The Subordinated Debentures distributed to Met-Ed will be canceled.

In the event that Met-Ed Capital Trust is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, Met-Ed Capital Trust may also have the obligation, if the Trust Securities are not redeemed or Subordinated Debentures are not distributed to the holders, to ''gross up'' payments so that the Trust Securities holders will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. In the latter event, Met-Ed's obligations under the Subordinated Debentures and the Guarantees would also cover any ''gross up'' obligations.

Upon receipt by Met-Ed Capital Trust of any distribution from Met-Ed Capital L.P. upon any voluntary or involuntary liquidation, dissolution or winding up of Met-Ed Capital L.P., the holders of the Trust Securities will be entitled to receive amounts in proportion to the respective number of Preferred Securities represented by the Trust Securities, out of the assets of Met-Ed Capital L.P. available for distribution after satisfaction of liabilities to creditors of Met-Ed Capital Trust.

In the event of any voluntary or involuntary dissolution or winding up of Met-Ed Capital L.P., the holders of Preferred Securities will be entitled to receive out of the assets of Met-Ed Capital L.P., after satisfaction of liabilities to creditors and before any distribution of assets is made to the Investment Sub, the sum of their stated liquidation preference and all accumulated and unpaid distributions to the date of payment of the Preferred Securities. All assets of Met-Ed Capital L.P. remaining after payment of the liquidation distribution to the holders of Preferred Securities will be distributed to the Investment Sub.

Upon any liquidation, dissolution or winding up of Met-Ed, the amount payable on each series of the Preferred Securities would be limited to a pro rata portion of any amount recovered by Met-Ed Capital L.P. in its capacity as a subordinated debt holder of Met-Ed. The Subordinated Debentures and the payment obligations under the Guarantee will be subordinate to all other existing and future Senior Indebtedness, except for any indebtedness that is by its terms subordinated to or *pari passu* with the Subordinated Debentures.

Met-Ed will use the net proceeds of the sale to Met-Ed Capital L.P. of Subordinated Debentures to redeem outstanding senior securities, to repay outstanding short-term debt, for construction purposes, and for other general corporate purposes, including to reimburse Met-Ed's treasury for funds previously expended for the above purposes.

Pennsylvania Electric Company

[70–9327]

Pennsylvania Electric Company (''Penelec''), 2800 Pottsville Pike, Reading Pennsylvania 19605, a public utility subsidiary of General Public Utilities Corporation (''GPU''), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 45 and 54 under the Act.

Penelec proposes to organize a special purpose subsidiary (Penelec Capital Trust) as a business trust under Delaware law, which will issue and sell from time to time in one or more series through December 31, 2000, up to $125 million aggregate liquidation value of preferred beneficial interests, in the form of trust securities (''Trust Securities'').[2] Each Trust Security will represent a cumulative preferred security (''Preferred Securities'') of a Delaware limited partnership (''Penelec Capital L.P.''), a special purpose indirect subsidiary of Penelec. Penelec also proposes to form a special purpose Delaware corporation (''Investment Sub''), to act as general partner of Penelec Capital L.P.

Penelec Capital Trust will acquire the Preferred Securities and issue the Trust Securities evidencing the Preferred Securities. Penelec Capital L.P. will issue one or more series of Preferred Securities and lend the proceeds thereof, plus a capital contribution (in an amount not to exceed $5 million) made by Penelec and Penelec Capital L.P., to Penelec, the loan will be evidenced by the ''Subordinated Debentures'' (defined below) issued by Penelec.

Penelec will acquire all of the common stock of Investment Sub for a nominal consideration and will capitalize Investment Sub with (i) a capital contribution in the amount of up to $5 million, and (ii) a demand promissory note in the principal amount of up to $13 million, that will bear interest, compounded semi-annually at Citibank's N.A. base rate as announced from time to time.

Investment Sub will acquire all of the general partner interests in Penelec

[2] The Trust Securities' liquidation value per interest is to be determined.

Capital L.P. for up to $5 million (''L.P. Equity Contribution''). Penelec Capital Trust will apply the proceeds from the sale of the Trust Securities to purchase the Preferred Securities. Penelec Capital L.P. will, in turn, use the proceeds received from the sale of the Preferred Securities, together with the L.P. Equity Contribution, to purchase Penelec's subordinated debentures (''Subordinated Debenture(s)'').

Penelec will also guarantee (''Guarantee'') the payment by Penelec Capital L.P.: (1) accrued but unpaid distributions on the Preferred Securities, if and to the extent Penelec Capital L.P. has declared the distributions out of funds legally available therefor; (2) the redemption price for any redemption of the Preferred Securities; (3) the aggregate liquidation preference on the Preferred Securities, including all accrued but unpaid distributions, whether or not declared; and (4) certain additional amounts.

Penelec Capital Trust's activities will be limited to the issuance and sale of Trust Securities and applying the proceeds to purchase Preferred Securities. Penelec Capital Trust's constituent instruments will not include any interest or distribution coverage or capitalization ratio restrictions on its ability to issue and sell Trust Securities as each issuance will be supported by a Subordinated Debenture and Guarantee. Therefore, Penelec states that these restrictions would not be relevant or necessary for Penelec Capital Trust to maintain an appropriate capital structure. Moreover, the issuance of Subordinated Debentures by Penelec will be subject to Penelec's Articles of Incorporation, which limits, without the consent of the holders of a majority of Penelec's outstanding Cumulative Preferred Stock, the amount of unsecured indebtedness which Penelec may have outstanding at any one time to 20% of the aggregate of the total outstanding principal amount of all bonds and other securities representing secured indebtedness issued or assumed by Penelec plus Penelec's capital stock, premiums, and surplus of Penelec as stated on its books of account. Penelec Capital Trust's constituent instruments will further state that Penelec Capital will be responsible for all liabilities and obligations of Penelec Capital Trust.

Each Subordinated Debenture will have an initial term of up to 49 years. Prior to maturity, Penelec will pay only interest on the Subordinated Debentures at a rate equal to the distribution rate on the Preferred Securities. The interest payments will constitute Penelec Capital Trust's only income and will be used by it to pay distributions on the Trust Securities, with any excess being distributed indirectly to Penelec as a distribution on Penelec's investment in Penelec Capital L.P., thereby reducing the interest cost on the Subordinated Debentures.

Distributions on the Trust Securities will be made not less than semi-annually, and will be cumulative and must be made to the extent that Penelec Capital Trust has legally available funds and cash sufficient for these purposes. However, Penelec will have the right to defer payment of interest on the Subordinated Debentures for up to five years in which event Penelec Capital Trust may similarly defer payment of distributions on the Trust Securities, but in no event may distributions be deferred beyond the maturity date of the Subordinated Debentures. The distribution rates, payment dates, redemption and other similar provisions of each series of Trust Securities will be identical to the interest rates, payment dates, redemption and other provisions of the Subordinated Debentures issued by Penelec.

Each Subordinated Debenture and related Guarantee will be subordinate to all other existing and future ''Senior Indebtedness,'' as defined below, of Penelec and will have not cross-default provisions with respect to other Penelec indebtedness—i.e., a default under any other outstanding Penelec indebtedness will not result in a default under the Subordinated Debenture or the Guarantee. However, Penelec may not declare and pay dividends on, or redeem or retire, its outstanding Cumulative Preferred Stock or Common Stock unless all payments then due (whether or not previously deferred) under the Subordinated Debentures and the Guarantees have been made. ''Senior Indebtedness'' consists of (i) the principal of and premium (if any) in respect of (A) indebtedness of Penelec for money borrowed and (B) indebtedness evidenced by securities, debentures, bonds or other similar instruments (including purchase money obligations) for payment of which Penelec is responsible or liable; (ii) all capital lease obligations of Penelec; (iii) all obligations of Penelec issued or assumed as the deferred purchase price of property, all conditional sales obligations of Penelec and all obligations of Penelec under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) certain obligations of Penelec for the reimbursement of any obligor on any letter of credit, banker's acceptance, security purchase facility or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of other persons for the payment of which Penelec is responsible or liable as obligor, guarantor or otherwise; and (vi) all obligations of the types referred to in clauses (i) through (v) of other persons secured by any lien on any property or asset of Penelec (whether or not the obligation is assumed by Penelec), except for any indebtedness that is by its terms subordinated to or *pari passu* with the Subordinated Debentures.

It is expected that Penelec's interest payments on the Subordinated Debentures will be deductible for income tax purposes and that Penelec Capital Trust will be treated as a trust for federal income tax purposes. Consequently, distributions from Penelec Capital Trust to the holders of Trust Securities, and indirectly to Penelec, will be deemed to constitute distributions of the interest income received by Penelec Capital Trust on the Subordinated Debentures. Consequently, the holders of Trust Securities and Penelec will not be entitled to any ''dividend received deduction'' under the Internal Revenue Code with respect to the distributions.

A series of the Trust Securities will be subject to mandatory redemption upon redemption of the corresponding series of the Preferred Securities. A series of Preferred Securities will be subject to mandatory redemption upon the maturity or prior redemption of the corresponding series of the Subordinated Debentures, but will not be subject to any mandatory sinking fund. A series of Preferred Securities may also be redeemable at the option of Penelec at a price equal to their liquidation value plus any accrued and unpaid distributions plus any premium negotiated in connection with the marketing of the Trust Securities, (i) at any time after a specified no-call period (if any) which could be up to the life of the issuance, or (ii) in the event that (I) Penelec Capital L.P. is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, or (II) Penelec Capital L.P. or Penelec Capital Trust is subject to federal income tax with respect to interest received on the Subordinated Debentures, or (III) it is determined that the interest payments by Penelec on the Subordinated Debentures are not deductible for federal income tax purposes or (IV) Penelec Capital L.P. is subject to more than a *de minimis* amount of other taxes, duties or other governmental charges, or (V) Penelec Capital L.P. becomes subject to regulation as an ''investment company''

under the Investment Company Act of 1940. Upon occurrence of any of the events set forth in clause (ii) above, Penelec Capital L.P. and Penelec Capital Trust could be dissolved and the Subordinated Debentures distributed directly to the holders of the Trust Securities and to Penelec on a pro rata basis, resulting in direct ownership of the Subordinated Debentures by the holders of the Trust Securities. The Subordinated Debentures distributed to Penelec will be canceled.

In the event that Penelec Capital Trust is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, Penelec Capital Trust may also have the obligation, if the Trust Securities are not redeemed or Subordinated Debentures are not distributed to the holders, to ''gross up'' the payments so that the Trust Securities holders will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. In the latter event, Penelec's obligations under the Subordinated Debentures and the Guarantees would also cover any ''gross up'' obligations.

Upon receipt by Penelec Capital Trust of any distribution from Penelec Capital L.P. upon any voluntary or involuntary liquidation, dissolution or winding up of Penelec Capital L.P., the holders of the Trust Securities will be entitled to receive amounts in proportion to the respective number of Preferred Securities represented by the Trust Securities, out of the assets of Penelec Capital L.P. available for distribution after satisfaction of liabilities to creditors of Penelec Capital Trust.

In the event of any voluntary or involuntary dissolution or winding up of Penelec Capital L.P., the holders of Preferred Securities will be entitled to receive out of the assets of Penelec Capital L.P., after satisfaction of liabilities to creditors and before any distribution of assets is made to the Investment Sub, the sum of their stated liquidation preference and all accumulated and unpaid distributions of the date of payment of the Preferred Securities. All assets of Penelec Capital L.P. remaining after payment of the liquidation distribution to the holders of Preferred Securities will be distributed to the Investment Sub.

Upon any liquidation, dissolution or winding up of Penelec, the amount payable on each series of the Preferred Securities would be limited to a pro rata portion of any amount recovered by Penelec Capital L.P. in its capacity as a subordinated debt holder of Penelec. The Subordinated Debentures and the payment obligations under the Guarantee will be subordinate to all other existing and future Senior Indebtedness, except for any indebtedness that is by its terms subordinated to or *Pari passu* with the Subordinated Debentures.

Penelec will use the net proceeds of the sale to Penelec Capital L.P. of Subordinated Debentures to redeem outstanding senior securities, to repay outstanding short-term debt, for construction purposes, and for other general corporate purposes, including to reimburse Penelec's treasury for funds previously expended for the above purposes.

Cinergy Corp., et al.

[70–9319]

Cinergy Corp., a registered holding company (''Cinergy''),[3] and its nonutility subsidiaries, Cinergy Investments, Inc. (''Cinergy Investments'') and Cinergy Global Resources, Inc. (''Cinergy Global Resources'' and, together with Cinergy and Cinergy Investments, ''Applicants''), each of 139 East Fourth Street, Cincinnati Ohio 45202, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 13, 32, 33 and 34 of the Act and rules 43, 45, 46, 53, 54, 83, 87, 90 and 91 under the Act.

By Commission order dated September 21, 1995 (HCAR No. 26376), as supplemented by Commission order dated March 8, 1996 (HCAR No. 26486) (together, ''Project Parent Orders''), Cinergy and Cinergy Investments were granted authority, from time to time through December 31, 1999, (i) to acquire directly or indirectly in one or more transactions, the securities of one or more special-purpose subsidiaries organized to engage directly or indirectly, and exclusively, in the business of acquiring, owning and holding the securities of, and/or providing services to, one or more foreign utility companies (''FUCOs'')[4] and exempt wholesale generators (''EWGs'' [5] and, together with FUCOs, ''Exempt Projects''), and (ii) to invest in and issue guarantees in respect of these special-purpose subsidiaries, provided that Cinergy's total investment in these subsidiaries, together with any investments in Exempt Projects, did not exceed a specified ceiling, recently increased to 100% of Cinergy's consolidated retained earnings by Commission order dated March 23, 1998 (HCAR No. 26848) (''100% Order'').

Applicants now propose to establish one or more special-purpose subsidiaries to hold Cinergy's direct or indirect interests in any or all of Cinergy's existing and future nonutility businesses (excluding the three existing nonutility interests held by Cinergy's utility subsidiaries [6]) and to engage in various financing and related transactions from time to time through December 31, 2003 (''Authorization Period'').

Intermediate Parents

To the extent not otherwise exempt under the Act, Applicants request authority during the Authorization Period to organize and hold securities of one or more special-purpose subsidiaries (each an ''Intermediate Parent'') to be formed for the exclusive purpose of acquiring, owning and holding, directly or indirectly (including through one or more additional Intermediate Parents), securities of or interests in, and/or providing services to, any or all of Cinergy's existing and future nonutility associate companies (other than KO, Tri-State and South Construction) listed below:

1. existing and future Exempt Projects;

2. special-purpose subsidiaries organized to engage directly or indirectly, and exclusively, in the business of acquiring, owning and holding the securities of, and/or providing services to, one or more Exempt Projects under the Project Parent Orders, prior to the date of the requested order (''EWG/FUCO Project Parents'');

3. existing and future exempt telecommunications companies (''ETCs'') [7]

4. existing and future ''energy-related companies'' as defined in rule 58 (''Rule 58 Companies''); and/or

5. other nonutility companies in which Cinergy (i) holds an interest under certain prior Commission orders [8]

[3] Through its six domestic retail public utility companies, PSI Energy, Inc., The Cincinnati Gas & Electric Company, The Union Light, Heat and Power Company, Lawrenceburg Gas Company, The West Harrison Gas and Electric Company and Miami Power Corporation, Cinergy provides retail electric service in north central, central and southern Indiana and retail electric and gas service in the southwestern portion of Ohio and adjacent areas of Indiana and Kentucky.

[4] FUCOs are defined in section 33 of the Act.

[5] EWGs are defined in section 32 of the Act.

[6] KO Transmission Company (''KO'') and Tri-State Improvement Company (''Tri-State'') are nonutility subsidiaries of The Cincinnati Gas & Electric Company, and South Construction Company, Inc. (''South Construction'') is a nonutility subsidiary of PSI Energy, Inc.

[7] ETCs are defined in section 34 of the Act.

[8] Cinergy presently holds interest in three of these companies: (i) Cinergy Investments (*see* HCAR No. 26146, October 21, 1994); (ii) Cinergy Solutions,

or (ii) acquires in the future (or is authorized to retain) an interest under one or more (a) Commission orders issued in subsequent proceedings or (b) exemptions from the requirement of prior Commission approval subsequently adopted under the Act (collectively, ''Authorized Companies'' and, together with the companies included in the preceding categories ''1'' through ''4'', ''Nonutility Companies'').

Services by Intermediate Parents

Any services provided by Intermediate Parents to other Intermediate Parents or to Nonutility Companies would include project development and administrative services and other support services. Without further Commission approval, Intermediate Parents would not provide services to any associate companies other than Intermediate Parents and Nonutility Companies. To the extent not exempt under rule 90(d)(1) or otherwise under the Act, Applicants request an exemption under section 13(b) from the ''at cost'' requirements of rules 90 and 91 with respect to the provision of services among the Intermediate Parents and Nonutility Companies. Cinergy Services, Inc., Cinergy's service company subsidiary, would continue to provide services to Intermediate Parents and Nonutility Companies under the existing Cinergy system nonutility service agreement.[9]

Organization and Capitalization of Intermediate Parents

Intermediate Parents may be wholly or partly owned direct or indirect subsidiaries of Cinergy, Cinergy Investments or Cinergy Global Resources. Initial capitalization by Applicants of Intermediate Parents would involve: (1) purchases of shares of capital stock, partnership interests, limited liability company member interests, trust certificates or other forms of equity interests; (2) capital contributions or open account advances without interest; and/or (3) debt financing.

Cinergy would obtain funds for initial and subsequent investments in Intermediate Parents from available internal sources or from external sources involving sales or short-term notes and commercial paper or additional shares of Cinergy common stock under Commission order dated January 20, 1998 (HCAR No. 26819) (''January 1998 Order'').[10] Cinergy Investments and Cinergy Global Resources would obtain funds for initial and subsequent investments in Intermediate Parents from available cash, capital contributions or loans from Cinergy, or external borrowings or sales of capital stock.

To the extent that Applicants provide funds to Intermediate Parents which in turn are applied to: (1) investments in Exempt Projects or Rule 58 Companies, the amount of the investments would be included in Cinergy's ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58 under the Act, as applicable; or (2) investments in Authorized Companies, the investments would conform to applicable rules under the Act (including rules 52 and 45(b)(4)) and applicable terms and conditions of any relevant Commission orders.

To the extent not exempt under rule 43(b) or otherwise under the Act, Applicants request authority on behalf of themselves and Intermediate Parents and Nonutility Companies to sell to and purchase from each other (but to or from no other associate companies) securities or other interests in the businesses of Intermediate Parents and Nonutility Companies.

Guarantees

Cinergy also proposes to issue guarantees in respect of Intermediate Parents and Nonutility Companies and certain other subsidiaries of Cinergy. Specifically, to the extent not otherwise exempt under the Act, Cinergy requests authority from time to time through the Authorization Period to guarantee the debt or other securities or obligations of (i) any and all existing and future Intermediate Parents (including Cinergy Investments and Cinergy Global Resources) and Nonutility Companies (excluding Cinergy's investment in Nth Power Fund), (ii) Cinergy Services, and (iii) KO, Tri-State and South Construction. The terms and conditions of any guarantees would be established at arm's length based upon market conditions.

Any guarantees issued and outstanding by Cinergy during the Authorization Period would be subject to the $2 Billion Debt Cap; in addition (1) any guarantees of Exempt Projects would conform to the aggregate investment limitation prescribed in the 100% Order, (2) any guarantees of Rule 58 Companies would conform to the aggregate investment limitation of rule 58, and (3) any Cinergy guarantees in respect of Cinergy Solutions, Inc. would remain subject to the separate $250 million ceiling prescribed in the Cinergy Solutions Order.

The requested order is intended to supersede certain Commission orders now in effect, in whole or in part.[11]

Payment of Dividends Out of Capital and Unearned Surplus

Finally, to the extent not otherwise exempt under the Act, Applicants request authorization for all of Cinergy's existing and future nonutility subsidiaries—Cinergy Investments, Cinergy Global Resources, all existing and future Intermediate Parents and Nonutility Companies (other than Nth Power Fund), and KO, Tri-State and South Construction—to declare and pay dividends out of capital or unearned surplus to their respective parent companies from time to time through the Authorization Period, where permitted under applicable corporate law and agreements with lenders or other third parties.

Inc. (''Cinergy Solutions''), formed pursuant to Commission order dated February 7, 1997 (HCAR No. 26662) (''Cinergy Solutions Order'') to market an array of energy-related products and services and to develop, acquire, own and operate certain energy-related projects; and (iii) Nth Power Technologies Fund I, L.P. (''Nth Power Fund''), in which Cinergy holds a minority limited partnership interest under Commission order dated August 28, 1996 (HCAR No. 26562) (''Nth Power Fund Order''). Nth Power Fund is not an affiliate or subsidiary company of Cinergy; *see* Nth Power Fund Order.

[9] *See* Commission order dated October 21, 1994 (HCAR No. 26146) (''Merger Order'') (approving original nonutility service agreement); Cinergy Solutions Order, *supra* note 6 (approving amendment to nonutility service agreement).

[10] The January 1998 Order authorizes Cinergy to issue and sell from time to time through December 31, 2002, subject to certain terms and conditions, (1) an aggregate principal amount of debt securities not to exceed $2 billion (''$2 Billion Debt Cap''), including short-term notes and commercial paper, together with (a) guarantees issued by Cinergy under the Commission's order dated May 30, 1997, HCAR No. 26723, and (b) debentures issued by Cinergy under authorization presently being sought in S.E.C. File No. 70–8993, notice for which was issued on May 2, 1997 (HCAR No. 26714); and (2) up to 30 million additional shares of Cinergy common stock, plus certain other shares of Cinergy common stock (totaling approximately 867,000) authorized, but not issued.

[11] Specifically, Applicants proposes that, upon issuance of the requested order, the Project Parent Orders and Commission order dated May 22, 1997 (HCAR No. 26719) (authorizing Cinergy Investments and certain other Cinergy nonutility subsidiaries to pay dividends out of capital or unearned surplus to their respective parent companies through December 31, 2002), be rescinded in their entirety. Applicants also request that the Cinergy Solutions Order and Commission order dated May 30, 1997 (HCAR No. 26723) (authorizing Cinergy and/or Cinergy Investments to issue guarantees on behalf of Cinergy Services, certain Cinergy nonutility subsidiaries, and future rule 58 companies in which Cinergy or its subsidiaries acquires an interest), be rescinded in part and superseded by the requested order to the extent that those prior authorizations relate to guarantees issued by Cinergy.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23071 Filed 8–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40348; File No. SR–PCX–98–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the OptiMark System—Specialist Bids and Offers

August 20, 1998

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt new Rule 15.3(b), which would require Specialists to ensure that their best bids and offers will be represented in the OptiMark System. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

¶*6731 Access*

Rule 15.2. The PCX Application shall be available for all interested members that decide to become Users. *The Exchange will assure that each PCX Specialist is provided with appropriate access to the PCX Application for the purpose of submitting Profiles from the Specialist's Post.* A non-member User may obtain access to the PCX Application only if such access is authorized in advance by one or more Designated Brokers in accordance with the terms of the applicable Give-Up Agreement and the Transmission Consent Agreement. Both agreements shall be in force before a non-member User may be given the authorization to obtain access to the PCX Application. At a minimum, the Give-Up Agreement and the Transmission Consent Agreement shall include any applicable credit limits imposed by the Designated Broker on the non-member User; the Designated Broker's undertaking that it is responsible for that non-member User's Orders and resulting transactions; and such other terms and conditions that may be agreed to from time to time. The Exchange shall be provided with a written statement from the Designated Broker acknowledging its responsibility for such Orders and resulting transactions.

¶*6732 Entry of Profiles and Generation of Orders*

Rule 15.3. Entry of Profiles and General of Orders

(a)—No change.

(b) Specialist Obligations—Specialists must ensure that at all relevant times during regular trading hours, their best bids and offers (whether reflecting limit orders or the Specialist's own interest) will be included in the OptiMark System as Profiles.

(c)–(d) [(b)–(c)]—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange is proposing to adopt new Rule 15.3(b) to require PCX Specialists to use the PCX Application of the OptiMark System (''PCX Application'') with respect to the bids and offers that they publish. The purpose of the rule is to facilitate best execution of customer orders by requiring PCX Specialists' best bids and offers to be included in the OptiMark System as Profiles. Once included, such trading interest is expected to interact with other trading interest, resulting in improved execution opportunities on the PCX. The Exchange believes that the rule change will facilitate interaction between the PCX Application and existing trading interest on the PCX floors, thereby promoting more efficient and effective market operations.

Specifically, proposed Rule 15.3(b) provides that PCX Specialists must ensure that at all relevant times during regular trading hours, their best bids and offers (whether reflecting limit orders or the Specialist's own interest) will be included in the OptiMark System.

The Exchange is also proposing to modify PCX Rule 15.2 by adding the following provision: ''The Exchange will assure that each Specialist is provided with appropriate access to the PCX Application for the purpose of submitting Profiles from the Specialist's Post.''

Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that the PCX Application is a facility that is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PCX consents, the Commission will:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. SR–PCX–98–36 and should be submitted by September 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23073 Filed 8–26–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Health Care Financing Administration (HCFA) Match Number 1076)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with HCFA.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner, Office of Program Support, 4400 West High Rise, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (P.L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act.

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: August 17, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Notice of Computer Matching Program, Health Care Financing Administration (HCFA) with the Social Security Administration (SSA)

A. Participating Agencies

SSA and HCFA.

B. Purpose of the Matching Program

To identify Supplemental Security Income (SSI) recipients who have been admitted to certain public institutions. The program will thereby facilitate benefit reductions required under certain provisions of title XVI of the Social Security Act. The matching program is designed to identify individuals who could be subject to a reduced SSI benefit under statutory provisions mandating a reduced benefit rate in many cases for any month throughout which the eligible individual or his eligible spouse resides in a hospital, extended care facility, nursing home, or intermediate care facility receiving medicaid payments (with respect to such individual or spouse) under a State plan approved under title XIX of the Social Security Act. Under the matching program, SSA will obtain admission data provided to HCFA from skilled nursing facilities as that term is defined in section 1819 of the Social Security Act (42 U.S.C. 1395i–3). HCFA's skilled nursing facility admission data will help SSA enforce the aforementioned SSI benefit reduction provision.

C. Authority for Conducting the Matching Programs

Sections 1611(e)(1)(A) and (B), and 1631(f) of the Social Security Act (42 U.S.C. 1382(e)(1)(A), 1382(e)(1)(B), and 1383(f)); 20 CFR 416.211.

D. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information regarding SSI applicants and recipients as provided by SSA to HCFA, HCFA will provide SSA with electronic files containing skilled nursing facility admission and billing data from its Long Term Care—Minimum Data Set LTC/MDS 09–70–1516 system of records. SSA will then match the HCFA data with SSI payment information maintained in the Supplemental Security Income Record, SSA/OSR 09–60–0103 system of records.

[3] 17 CFR 200.30–3(a)(12).

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 98–22963 Filed 8–26–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2873]

Bureau of Political Military Affairs; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; maintenance of records by registrants.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Originating Office: Bureau of Political Military Affairs.

Title of Information Collection: Maintenance of Records by Registrants.

Frequency: On occasion.

Form Number: None.

Respondents: Persons or business applying for defense trade export licenses or services.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 20 hours per person or business.

Total Estimated Burden: 100,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: August 4, 1998.

Fernando Burbano,

Chief Information Officer.

[FR Doc. 98–22955 Filed 8–26–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2872]

Bureau of Intelligence and Research; Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union; Notice of Committee Renewal

I. Renewal of Advisory Committee. The Department of State has renewed the Charter of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. This advisory committee makes recommendations to the Secretary of State on funding for applications submitted for the Research and Training Program on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII). These applications are submitted in response to an annual, open competition among U.S. national organizations with interest and expertise administering research and training programs in the Russian, Eurasian, and East European fields. The program seeks to build and sustain U.S. expertise on these regions through support for advanced graduate training, language training, and postdoctoral research.

The committee includes representatives of the Secretaries of Defense and Education, the Librarian of Congress, and the Presidents of the American Association for the Advancement of Slavic Studies and the Association of American Universities. The Assistant Secretary for Intelligence and Research chairs the advisory committee for the Secretary of State. The committee meets at least annually to recommend grant policies and recipients.

For further information, please call: Michelle Staton, INR/RES, U.S. Department of State, (202) 736–4155.

Dated: August 4, 1998.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 98–23051 Filed 8–26–98; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Federal Aviation Administration

[Docket No. OST 98–4025]

Request for Public Comment on Competitive Issues Affecting the Domestic Airline Industry

AGENCY: Office of the Secretary, Federal Aviation Administration, United States Department of Transportation.

ACTION: Notice extending comment period.

SUMMARY: On July 13, 1998, the Department of Transportation opened a public docket to receive information from interested parties on airport practices and their implications for competition among air carriers. Parties wishing to file comments with the Department were given until September 1, 1998. By this notice, the Department is extending the time period for public comment from September 1, 1998, until December 30, 1998.

DATES: Comments should be received by December 30, 1998. Comments that are received after that date will be considered only to the extent possible.

FOR FURTHER INFORMATION CONTACT: For additional information on the scope of the Department's study or the name of the individual in DOT who is in the best position to answer your questions, please contact either James New (202–366–4868) or Larry Phillips (202–366–4382). A copy of this Notice can be obtained via the World Wide Web at: http://www.dot.gov/ost/aviation/. Comments placed in the docket will be available for viewing on the Internet.

SUPPLEMENTARY INFORMATION: The Department recently published a request for public comment on competitive issues affecting the domestic airline industry (63 FR 37612, July 13, 1998). In that request, we asked parties to provide us with detailed information on 14 specific issues that focus on airport practices and their impact on airline competition. Based on an August 6 petition of the Air Transport Association of America (ATA) to extend the comment period, as well as correspondence from the Airports

Council International, N.A. (ACI), we are now convinced that our original schedule for submission of this material was unrealistic.

The ATA petitioned pursuant to the Department's Rulemaking Procedures (49 CFR 5.25(a)) to extend the comment period by at least 120 days, to December 30, 1998 on the grounds that it needs time to prepare and conduct an extensive survey of airlines and airports, organize and analyze the data collected, and draft comments for approval by its members in response to the complex issues we raised. Stating that it does not wish to unduly delay this proceeding, ATA nevertheless argued that we have no regulatory deadline to meet and that it could be more helpful if it had more time to collect and analyze information. In further support of its petition, the ATA claimed it will need time to review our expected responses to its August 6 Freedom of Information Act requests for records pertinent to our **Federal Register** notice in this docket. Finally, the ATA requests a supplemental notice and comment period for our intended methodology for analyzing the information and data relevant to the competitive issues affecting the airline industry. ATA requested that we act within ten business days of its filing. The ATA stated that, since its member airlines serve, either directly or through code-share relationships, about 95 percent of the more than 400 domestic commercial service airports, it has a substantive interest in this proceeding.

In a July 16 letter to us, the ACI said that our September 1 deadline would not allow it adequate time to compile, verify and analyze pertinent information from airport operators and then prepare well-reasoned responses to the complex legal, economic, and policy questions identified.

Under our rules (49 CFR 5.25(b)), we may grant a petition for extension of time when a petitioner shows that it is in the public interest and the petitioner has good cause for the extension and a substantive interest in the proposed action. We have determined that it would be reasonable and in the public interest to give parties more time to prepare their submissions. While we are interested in a prompt study of the competitive issues affecting the domestic airline industry, we realize that the industry needs additional time to formulate its comments, to issue surveys, and to process the survey results.

Accordingly:

1. We grant the request of the Air Transport Association to extend the date by which comments to Docket No. OST–98–4025 are due to December 30, 1998; and

2. We deny all other requests.

Rosalind A. Knapp,

Deputy General Counsel, Department of Transportation.

Susan L. Kurland,

Associate Administrator for Airports, Federal Aviation Administration.

[FR Doc. 98–23080 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Tasks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignments for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Transport Standards Staff (ANM–110), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; phone (425) 227–1255; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with response to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization tasks:

Task 15: Structural Integrity of Fuel Tanks for Emergency Landing Conditions and Landing Gear

Review the current standards of §§ 25.721, 25.963 and 25.994 as they pertain to the strength of fuel tanks and protection from rupture during emergency landing conditions including landing gear break-away. Review also any related FAA and JAA advisory material. In the light of this review, recommend changes to harmonize these sections and the corresponding JAR paragraphs, recommend new harmonized standards, and develop related advisory material as necessary.

The FAA expects ARAC to submit its recommendation(s) resulting from this task by July 31, 1999.

Task 16: Fire Protection of Structure

Review the current standards of § 25.865 and those for corresponding JAR 25.865 as they pertain to the protection of Loads and Dynamics and structures from fires in designated fire zones. Review also FAA issue papers issued for engine support structures made of materials other than steel, and any related JAA advisory material. In the light of this review, recommend changes to harmonize this section and the corresponding JAR paragraph, recommend new harmonized standards, and develop related advisory material as necessary.

The FAA expects ARAC to submit its recommendation(s) resulting from this task by March 31, 2001.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the resulting recommendation(s) are one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

Working Group Activity

The Loads and Dynamics Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed

recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Loads and Dynamics Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 20, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–22999 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping for Proposed Air Traffic Control Procedures and Airspace Modifications for Aircraft Entering and Existing the Chicago and Milwaukee Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Public Scoping.

SUMMARY: The Federal Aviation Administration (FAA), Great Lakes Region, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered to evaluate proposed air traffic control procedures and airspace modifications for aircraft entering and exiting the Chicago and Milwaukee Terminal Radar Approach Control airspace areas. To ensure that all significant issues related to the proposed action are identified, public scoping will be held.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Davis, Federal Aviation Administration, Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, 847–294–7832.

SUPPLEMENTARY INFORMATION: The FAA will prepare an EIS to evaluate proposed air traffic control procedures and airspace modifications as identified by the Chicago Terminal Airspace Project (CTAP). The purpose of the proposed changes is to improve traffic flows and reduce airborne and ground delays during peak periods. The proposed changes would enhance safety and efficiently by maximizing controller flexibility and simplifying operations for pilots.

The primary focus of the proposed project is the transfer of portions of the Chicago Air Route Traffic Control Center (ARTCC) airspace to Chicago Terminal Radar Approach Control (TRACON) airspace along the existing high-altitude arrival gateways. Components of the proposal also include:

- One additional high-altitude arrival route, two modified arrival routes, and more flexible use of existing departure corridors for Chicago O'Hare International Airport
- A more direct route for arrival aircraft from the northwest and northeast destined for Chicago Midway Airport, Chicago Meigs Airport, Gary Airport, and other general aviation/reliever airports
- One new high-altitude arrival route separating Milwaukee General Mitchell Airport and reliever/satellite airport traffic

The proposed changes would occur within a widespread area and include primary and reliever airports in northeast Illinois, southern Wisconsin, and northwest Indiana. Because there exists a potential to generate noise impacts, the FAA has made a decision to initiate the EIS process. The FAA retains the option to terminate the EIS process and issue an Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) if warranted, based on the environmental review process.

Public Scoping: The purpose of scoping is to ensure that the full range of issues related to a proposed project are addressed and all significant issues are identified. In this endeavor, comments and suggestions are invited from Federal, State, and local agencies, and other interested parties. Copies of materials regarding the proposed project may be obtained from the information contact listed above.

Information is also available on the Internet at the web site address http://www.faa.gov/ctap.html.

To facilitate understanding of the proposed project and receipt of comments from the public, two scoping meetings will be held on Monday, September 28, 1998. The first meeting, for community representatives, locally elected officials, and special interest groups, will be held from 10:00 a.m. to 12:00 p.m. at the Federal Aviation Administration Great Lakes Regional Office, 2300 E. Devon Avenue, Des Plaines, IL, 60018, Room 453. A second meeting, for resource agencies will be held from 1:00 p.m. to 3:00 p.m. at the Federal Aviation Administration Great Lakes Regional Office, 2300 E. Devon Avenue, Des Plaines, IL, 60018, Room 453. A workshop for the general public will be held Thursday, October 1, from 5:00 p.m. to 8:00 p.m., at the Federal Aviation Administration Great Lakes Regional Office, 2300 E. Devon Avenue, Des Plaines, IL, 60018, Room 166/170.

Written comments may be mailed to Ms. Annette Davis, AGL–520.E, Federal Aviation Administration, Great Lakes Region, Air Traffic Division, 2300 E. Devon Avenue, Des Plaines, IL, 60018, prior to October 16, 1998.

* * * * *

Issued in Des Plaines, Illinois, on August 20, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–23005 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Joint Special Committee 190/EUROCAE Working Group 52

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee (SC)–190/EUROCAE Working Group (WG)–52 meeting to be held September 14–18, 1998, starting at 8:30 a.m. each day. The meeting will be held at Hotel Le Domain de Mousquety, 84800, L'Isle sur la Sorgue, France. The hotel phone number is 011 33 04 90 38

70 00 and the fax number is 011 33 04 90 20 22 29.

The agenda will include the following: Monday, September 14: 8:30 a.m.–5:00 p.m. (1) Registration; 1:00–3:00 p.m. (2) CNS/ATM Tutorial and Panel; 3:30–5:00 p.m. (3) ED–12B/DO–178B and WG–52/SC–190 Tutorial and Panel; Tuesday, September 15: 8:30 a.m.–12:00 noon (4) a. Opening Remarks and General Introductions; b. Review and Approval of Summary of the Previous Meeting; c. CAST/SSAC; d. Task Force 4; e. Web Progress; f. Group Reports; 1:30 p.m. (5) Working Group Breakout Sessions; Wednesday, September 16: 8:30 a.m.–5:00 p.m. (6) Working Group Breakout Sessions; Thursday, September 17: 8:30 a.m.–5:00 p.m. (7) Working Group Breakout Sessions; Friday, September 18: 8:30 a.m. (8) a. Group Reports; b. Executive Report; c. Action Items; d. Next Meeting Information; e. Process Check; f. Closing Remarks; 12:00 noon (9) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 21, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–23009 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Bradley D. Keazer, Assistant Division Administrator/Director of Program Development, Federal Highway Administration, 980–9th Street, Suite 400, Sacramento, CA 95814–2724, Telephone: (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to widen State Route 138 from two lanes to four lanes from Avenue T to State Route 18, through the City of Palmdale and the communities of Littlerock, Pearblossom, and Llano (18.0 miles). The proposed project includes constructing one additional lane of standard width in each direction following the existing alignment, widening the California Aqueduct bridge, and constructing a new bridge at Big Rock Wash. These improvements are intended to serve as a major arterial to accommodate the substantial increases in traffic volumes associated with an increased growth rate in the region.

Alternatives under consideration include (1) taking no action, and (2) adding one lane in each direction to make a four-lane conventional highway. Within the limits of the study area for this project, various environmental resources and issues are known to exist. These include, but are not limited to: cultural, 4(f), wetlands, floodway and floodplain, wildlife habitat, growth inducement, economics, residential and business relocation, noise, changes to vehicle traffic patterns, regional air quality, seismic exposure, land use planning, hazardous waste, and irrigation/drain systems.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. At least one public meeting will be held to solicit input from the local citizens on alternatives. In addition, a public hearing will be held. Public Notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Document Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 10, 1998.

Bradley D. Keazer,

Assistant Division Administrator/Director of Program Development, Sacramento, California.

[FR Doc. 98–22959 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–98–4356]

DOT Listening Session on New Federal Credit Programs

AGENCY: Federal Highway Administration (''FHWA''), DOT.

ACTION: Public meeting.

SUMMARY: The Transportation Equity Act for the 21st Century (''TEA–21''), Public Law 105–178, 112 Stat. 107 (1998), established two new Federal credit programs for surface transportation projects. The Transportation Infrastructure Finance and Innovation Act (''TIFIA''), Title I, Subtitle E, Chapter 1 was established to provide up to $10.6 billion of Federal assistance in the form of credit (direct loans, loan guarantees, and standby lines of credit) to major surface transportation projects of critical national importance, such as intermodal facilities, border crossing infrastructure, trade corridors, and other investments generating substantial regional and national economic and other benefits. The Railroad Rehabilitation and Improvement Financing program (''RRIF''), Title VII, Subtitle B amended Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 to provide up to $3.5 billion of Federal assistance in the form of direct loans and loan guarantees for eligible railroad projects. Prior to implementation, the Federal Highway Administration (''FHWA''), on behalf of the United States Department of Transportation (''USDOT''), will conduct on outreach session on TIFIA and RRIF to consult with its partners and customers. This notice serves to invite public officials, potential project sponsors, the financial community, and other interested parties to attend a meeting to share their comments with the USDOT concerning suggestions on how best to administer the new programs.

DATES: The public meeting will be held on Monday, September 14, 1998, from 10:00 a.m. until 4:00 p.m.

ADDRESSES: The meeting will be held in the Oval Room of the Port Authority of New York and New Jersey, One World Trade Center, 43rd floor, New York, New York. The morning session will be devoted to TIFIA and the afternoon session to RRIF.

FOR FURTHER INFORMATION CONTACT: On TIFIA: David Seltzer, (202) 366–0397, or Bryan Grote, (202) 366–5785, Office of Budget and Finance, Room 4310, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. On RRIF: Joanne McGowan, (202) 493–6390, Office of Railroad Development, Mail Stop 20, Federal Railroad Administration, Department of Transportation, Washington, DC 20590. Office hours for FHWA and FRA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara. A copy of the TEA–21 legislation and conference report containing the TIFIA and RRIF programs is available on the FHWA Home Page at http://www.fhwa.dot.gov/tea21/legis.htm.

Authority: 23 USC 181 and 49 CFR 1.45(a)(1).

Issued on: August 21, 1998.

Jerry A. Hawkins,

Director, Office of Personnel and Training.

[FR Doc. 98–23066 Filed 8–26–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20925]

Greyhound Lines, Inc., et al.—Acquisition of Assets—Southeastern Trailways, Inc., and Peoria—Rockford Bus Co

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Greyhound Lines, Inc. (Greyhound), a motor carrier of passengers, and its wholly owned noncarrier subsidiary, GLI Holding Co. (GLIH) (applicants), seek approval under 49 U.S.C. 14303 to acquire certain assets of Southeastern Trailways, Inc. (SET) and Peoria—Rockford Bus Co. (PRB), including their operating authorities, to engage in scheduled, regular-route, intercity service as motor common carriers of passengers and express, pursuant to certificates of public convenience and necessity issued by the former Interstate Commerce Commission in Docket Nos. MC–54591 and MC–66810, respectively.[1] Persons wishing to oppose the transaction must follow the rules at 49 CFR 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. If opposing comments are timely filed, this tentative grant of authority will be deemed vacated, and the Board will consider the comments and any replies, and will issue a further decision on the application.

DATES: Comments are due by October 12, 1998. Applicants may reply by November 2, 1998. If no comments are received by October 12, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC-F–20925 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy of comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Greyhound holds nationwide operating authority in Docket No. MC–1515 and sub-numbered proceedings. It also controls directly or indirectly 8 other regional motor carriers of passengers. Greyhound directly controls (1) Continental Panhandle Lines, Inc. (MC–8742), operating in Oklahoma and Texas; (2) GLI Holding Co., and indirectly (a) Valley Transit Company, Inc. (MC–74), operating in Texas; (b) Carolina Coach Company, Inc. (MC–13300), operating in Delaware, Virginia and North Carolina; (c) Texas, New Mexico & Oklahoma Coaches, Inc. (MC–61120), operating in Texas, New Mexico, Colorado, Kansas and Oklahoma; and (d) Vermont Transit Co., Inc. (MC–45626), operating in Maine, Vermont, Massachusetts and New York; and (3) Sistema Internacional de Transporte de Autobuses, Inc. (SITA), a non-carrier subsidiary which controls 3 carriers: Los Rapidos, Inc. (MC–293638), operating in Arizona and California; Americanos, U.S.A., L.L.C. (MC–309813), operating nationwide; and Gonzalez, Inc., d/b/a Golden State Transportation (MC–173837), operating in the Southwest.[2]

SET holds operating authority issued in MC–54591 and sub-numbered proceedings to conduct operations as a motor common carrier of passengers and express in scheduled, regular-route, intercity service between Chicago, IL and St. Louis, MO; Chicago, IL and Indianapolis, IN; Indianapolis, IN and Cincinnati, OH; Cincinnati, OH and Knoxville, TN; Indianapolis, IN and Louisville, KY; Detroit, MI and Cincinnati, OH; and Cincinnati, OH and Louisville, KY. SET will retain its authority to handle charter operations.

PRB holds operating authority, issued in MC–66810 and sub-numbered proceedings, to conduct operations as a motor carrier of passengers and express in scheduled, regular-route, and intercity service between O'Hare Airport and Rockford, IL.

SET and PRB have been commonly-controlled, family owned and operated businesses. For the past 10 years, all of SET's scheduled, regular-route, intercity operations have been the subject of a revenue pooling agreement with Greyhound that was approved by the former Interstate Commerce Commission in *Southeastern Trailways, Inc., et al.—Pooling—Greyhound Lines, Inc.*, Docket No. MC–F–18939 (ICC served Nov. 28, 1988). SET has occupied Greyhound's terminals and has been a participant in Greyhound's tariffs. When the owners of SET and PRB decided to sell parts of their businesses, they approached Greyhound. Greyhound's new subsidiary, SET Acquisition Corp. (Acquisition), purchased SET's assets on July 1, 1998. Applicants state that the stock of Acquisition has been placed in a voting trust[3] pending disposition of

[1] The properties of SET and PRB will be acquired by newly created noncarrier subsidiaries, SET Acquisition Corp. and PRB Acquisition LLC, respectively. SET Acquisition Corp. will be merged into Greyhound upon receiving regulatory approval and PRB Acquisition will become a subsidiary of Greyhound through its wholly owned, noncarrier subsidiary, GLIH.

[2] An application for Greyhound, through its subsidiary SITA, to continue in control of Autobuses Amigos, L.L.C., upon its becoming a motor carrier of passengers, was tentatively approved, subject to comments by September 8, 1998, in *Greyhound Lines, Inc.—Continuance in Control—Autobuses Amigos, L.L.C.*, STB Docket No. MC–F–20922 (STB served July 22, 1998).

[3] A voting trust agreement was informally approved by the Board's Secretary in his letter dated July 1, 1998.

this proceeding. Greyhound's new subsidiary, PRB Acquisition, LLC, will purchase certain assets of PRB after regulatory approval of the transaction.

Applicants state that the aggregate gross operating revenues from interstate operations of Greyhound and its affiliates exceeded $2 million during the 12 months preceding this application. Applicants also state that the proposed transaction will have little effect on competition; that the total fixed charges associated with the proposed transaction are well within Greyhound's financial means; and that there will be no change in the status of any PRB employee, and that those employees who elect not to remain with SET will be offered employment with Greyhound or a Greyhound affiliate. Any affected SET, PRB, or Greyhound employee will be accommodated pursuant to the collective bargaining agreements with the unions representing them. Therefore, because no employees will be adversely affected, applicants assert that no conditions need be attached for their protection.

We conclude that this transaction will advance the goals of the national transportation policy by promoting safe, adequate, economical and efficient transportation; by meeting the needs of passengers; and by providing and maintaining service to small communities. As to SET, passenger travel will be improved: (1) by eliminating the confusion sometimes associated with pooled operations; (2) by making it more convenient to transfer to connecting Greyhound bus routes; (3) by assuring passengers of equipment that is up-to-date and operated by well trained, experienced drivers; and (4) by freeing Greyhound to adjust schedules and routes in response to market conditions to assure its passengers of excellent service at attractive fares. As to PRB, airport passengers and crews traveling between the community of Rockford and O'Hare Airport will benefit from Greyhound's experience in providing airport operations throughout the country.

Greyhound's acquisition of SET assets will improve its financial condition, while freeing Greyhound from the restraints of revenue pooling, by allowing Greyhound to revise schedules, adjust fares, and improve utilization of equipment and drivers for more efficient and economical operations. As to PRB, although this is a new market for Greyhound, overhead costs will not significantly increase because Chicago is already a major service point for Greyhound. The envisioned improvement in efficiency and economy will inure to the benefit of the traveling public.

Applicants assert that competition will not be impaired as a result of Greyhound's proposed acquisition of the SET and PRB assets. Competition between SET and Greyhound over the pooled routes has been limited, because SET and Greyhound's schedules of operation were based on the terms of the revenue pooling agreement and SET had elected to participate in Greyhound's tariffs for the most part. Moreover, there appears to be substantial intermodal competition and the acquisitions do not threaten to produce an unreasonable restraint on competition. Applicants note that there is keen competition from other modes of passenger travel in the area, including private automobiles and other bus companies. On the other hand, PRB will continue its operations between O'Hare Airport and Rockford that are under contract with United Airlines. Thus Greyhound's acquisition of PRB's regular-route, intercity service will result in no reduction of competition between the two carriers.

Applicants certify that: (1) Greyhound and each of its affiliates (except Americanos, which is not yet rated) hold satisfactory safety ratings; (2) Greyhound and its affiliates have appointed agents in each of the states in which they operate in accordance with 49 U.S.C. 13303 and 13304 and 49 CFR 1944.1, *et seq.*, and have procured liability insurance or obtained self insurance authorization in accordance with 49 U.S.C. 13906 and 49 CFR 1043.1, *et seq.* (Greyhound and its affiliates are in compliance with these provisions); (3) Greyhound and its affiliates are not domiciled in Mexico and are not owned or controlled by a person of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result from the proposed transaction; and (3) the interest of carrier employees affected by the proposed transaction. We find, based on the application, that the proposed transaction is consistent with the public interest and should be authorized.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The acquisition by Greyhound and GLIH of certain assets and operating authorities issued in MC–54591 and MC–66810 to SET and PRB, respectively, is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on October 12, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: August 21, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–23094 Filed 8–26–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–71]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocation.

SUMMARY: Notice is hereby given that on August 7, 1998, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following Customs broker licenses due to the failure of the broker to file the status report as required by 19 CFR 111.30(d). The list of affected brokers is as follows:

Last name	First name	License	Port
BERNSTEIN	MARLA	14836	BOSTON.

Last name	First name	License	Port
BOUCHARD	LINDA	10444	BOSTON.
BROADHURST	A. SCOTT	07701	BOSTON.
DRISCOLL	SUSAN	09891	BOSTON.
GILLIS	FRANCIS E	05280	BOSTON.
GRACE	ANN	11239	BOSTON.
HEROSIAN	GLENN A	07702	BOSTON.
KEARNS-SIMINGTON	JEANNE	09254	BOSTON.
KONNER	WILLIAM B	07710	BOSTON.
MACDONALD	JAMES D	05432	BOSTON.
MANDELL	STEPHEN M	10517	BOSTON.
MAYZEL	MICHAEL S	03255	BOSTON.
MCCARTER	ALLEN G	03269	BOSTON.
MCCARTHY	JOHN V	02939	BOSTON.
MESSINA	MICHAEL E	10175	BOSTON.
MESSINA	VINCENT F	05818	BOSTON.
MOORE	MARILYN E	04880	BOSTON.
MUNNICH	JULIAN J	11924	BOSTON.
PELLETIER	CHRISTINE JOHNSON	11566	BOSTON.
PETRUCELLI	ROBERT N	08066	BOSTON.
POWELL JR. (DECEASED)	PETER	10173	BOSTON.
PULEIO	FRANK	13598	BOSTON.
RIBEIRO	ROBERT G	10024	BOSTON.
SAMA	GERALD	03334	BOSTON.
SILVA	PAUL A.	05905	BOSTON.
SUPINO	LAURIE	13163	BOSTON.
TIGHE	DIANA	11306	BOSTON.
TILLOTSON	ROY J	12728	BOSTON.
ABBOTT	DONALD E	05713	BUFFALO.
ALEXANDER	AMARIN	12160	BUFFALO.
BAUER	JAMES M	12151	BUFFALO.
BONEBERG	JUSTINE J	10395	BUFFALO.
CAMILLI	ANTHONY E., JR	04816	BUFFALO.
CONROY	MARGARET M	07880	BUFFALO.
DENISCO	KATHLEEN H	05193	BUFFALO.
FARLEY	THOMAS C., JR	09039	BUFFALO.
GIPP	KELLY A	11905	BUFFALO.
KAVANAUGH	CYNTHIA M	10495	BUFFALO.
MCGEE	BONNIE A	09046	BUFFALO.
NEAL	RONALD A., SR	03825	BUFFALO.
SMITH	RONALD C	06411	BUFFALO.
WHITE	ROBERT F	11129	BUFFALO.
WINKER	LYNN A	05946	BUFFALO.
AMES	PHYLLIS	06152	NEW YORK.
ARANOFF	ROBERT I	09644	NEW YORK.
AROSE	WILLIAM E	05958	NEW YORK.
BANKS	LLOYD	02878	NEW YORK.
BARRECA	RAYMOND E	03953	NEW YORK.
BECKMANN	ALLAN G	02341	NEW YORK.
BENGIS	VICTOR	1403	NEW YORK.
BERNGARDSEN	TRYGVE	04210	NEW YORK.
BOLL	JOSEPH	02297	NEW YORK.
BOLTER	EUGENE T	03064	NEW YORK.
BRAVERMAN	LAWRENCE	03481	NEW YORK.
BROADHURST	SCOTT A	08079	NEW YORK.
BRODSKY	SEYMOUR	02497	NEW YORK.
BROZ	STEVEN	14881	NEW YORK.
BRUINS	LORI J	12489	NEW YORK.
BRYAN	ALIX	07929	NEW YORK.
BURNS	MARGARET M	10009	NEW YORK.
BUTERA	GASPARINO	12320	NEW YORK.
CALVERT	ELIZABETH	06051	NEW YORK.
CAMINO	VICTORIA	09672	NEW YORK.
CARDONA	RENE	12507	NEW YORK.
CELLA	JOSEPH A	03366	NEW YORK.
CHERRY	STEVEN M	08014	NEW YORK.
CHRISTOPHIDES	ORESTES	02873	NEW YORK.
COATES	ROBERT EDWARD	02940	NEW YORK.
COLELLA	PETER	03819	NEW YORK.
CONTE	PATSY ALBERT	03562	NEW YORK.
CORCORAN	THOMAS A	03391	NEW YORK.
CORSO	JOHN	03633	NEW YORK.
CORTESE	ANTOINETTE	10497	NEW YORK.
COWDEN	FRANKLIN J	03054	NEW YORK.
CRECCO	ADELE E	09757	NEW YORK.

Last name	First name	License	Port
DARNOWSKI	RICHARD S	04505	NEW YORK.
DAVILA	JAMES J	03563	NEW YORK.
DE MARTINI	GEORGE	06859	NEW YORK.
DE GAETANO	ROBERT	06845	NEW YORK.
DEBATTO	ALFRED J	06022	NEW YORK.
DEPASS	LIONEL	03358	NEW YORK.
EMMANUELLE	CHARLES A	02134	NEW YORK.
ENGERS	JAMES S	02472	NEW YORK.
EPSKY	EUGENE J	03493	NEW YORK.
ESPOSITO	EDWARD J	03915	NEW YORK.
FEDERMAN	SAUL	05607	NEW YORK.
FILIKS	EDWARD A	14488	NEW YORK.
FINLEY	JEANETTE	10017	NEW YORK.
FONTE	BARTOLO	02947	NEW YORK.
FRANCIS	ROSEMARIE	07876	NEW YORK.
FREUND	RUDOLPH H.C	02339	NEW YORK.
FRIEDMAN	HARRY	02781	NEW YORK.
GANGEMI	NATALE JOSEPH	02199	NEW YORK.
GILBERTI	THOMAS J	03637	NEW YORK.
GILLEN	EUGENE T	02838	NEW YORK.
GLAZER	PHILIP	02184	NEW YORK.
GOMEZ	MARTA	03680	NEW YORK.
GOODGLASS	IRWIN M	02669	NEW YORK.
GUGGENHEIM	IRWIN	07169	NEW YORK.
GURGE	KENNETH J	02399	NEW YORK.
GUTTMAN	BERNARD R	03357	NEW YORK.
HARDY	ROBERT W	11294	NEW YORK.
HASKEL	ADAM	13229	NEW YORK.
HEIDL	FRANCIS X., JR	02783	NEW YORK.
HELD	WARREN J	11867	NEW YORK.
HENKE	HOWARD J., JR	03617	NEW YORK.
HERMAN	MARTIN	06108	NEW YORK.
HOGAN	WILLIAM F	10641	NEW YORK.
HUBERT	MICHAEL J	03355	NEW YORK.
HUMMEL	ROLAND REED, JR	02927	NEW YORK.
ISACOFF	NORMAN	04970	NEW YORK.
JACOBUS	PETER	07124	NEW YORK.
JAE	JOEL	09718	NEW YORK.
JEGLINSKI-MURO	JOANNE	09949	NEW YORK.
KASMANOFF	GERTRUDE	11245	NEW YORK.
KAUFMAN	SAMUEL J	01576	NEW YORK.
KEEGAN	MARY E	10568	NEW YORK.
KENNEALLY	ROBERT	07970	NEW YORK.
KIRWIN	BARBARA	06180	NEW YORK.
KOTCHER	DANIEL	09515	NEW YORK.
LANZELLO	JULIE ANNE M	10786	NEW YORK.
LARSON	SELMA E	09319	NEW YORK.
LAUFER	ARTHUR	02938	NEW YORK.
LEDERER	ALBERT R	09983	NEW YORK.
LEPORATI	WALTER	10182	NEW YORK.
LEVINE	IRVING	03543	NEW YORK.
LEWIN	JACK	03627	NEW YORK.
LEYDEN	PAUL J	04123	NEW YORK.
LITT	MORRIS	02892	NEW YORK.
LOBDELL	PAMELA A	13592	NEW YORK.
LOFARO	FRANK A., SR	03821	NEW YORK.
LUBLINER	FELIX H	02575	NEW YORK.
LUTTON-MARVIN	JANET K	09195	NEW YORK.
MANCUSI	VINCENT T	02596	NEW YORK.
MARKWALTER	FRANK J., JR	02303	NEW YORK.
MARONNA	ANTHONY G	06009	NEW YORK.
MAROSI	TIBOR	07291	NEW YORK.
MARTIN	JOSEPH P	03880	NEW YORK.
MAURO	MARIO	03246	NEW YORK.
MCCARTHY	JOHN M	01850	NEW YORK.
MCILLROY	JOHN P	13014	NEW YORK.
MCNAMARA	HERBERT J	06903	NEW YORK.
MCQUILLIN	SHARIN	05553	NEW YORK.
MEETRE	STEVEN A	13002	NEW YORK.
MERCER	WALTER SCOTT	02881	NEW YORK.
MERLO	NICHOLAS	02397	NEW YORK.
MEYER	WILLIAM A	10040	NEW YORK.
MILLER	ALFRED	03692	NEW YORK.
MILLER	ADAM	06035	NEW YORK.

Last name	First name	License	Port
MILLER	SIDNEY	03705	NEW YORK.
MITCHELL	JOHN KENNETH	04599	NEW YORK.
NEALON	JAMES M	02329	NEW YORK.
NETSKA	JOSEPH	02555	NEW YORK.
NOVELLO	GARY C	09679	NEW YORK.
ORTIZ	JOSEPH	03635	NEW YORK.
OSEKOSKY	STEPHEN J.	06020	NEW YORK.
PANGILIAN	JESUS	10378	NEW YORK.
PANZER	ALVIN M	04821	NEW YORK.
PASTOR	JOSEPH G	05104	NEW YORK.
PELLGRINO	VINCENT B	03266	NEW YORK.
PENSO	ANITA	06432	NEW YORK.
PUJOL	JOHN J	06791	NEW YORK.
QUIGLEY	DAVID L	06011	NEW YORK.
REDMOND	PETER W	12370	NEW YORK.
RENDEIRO	JAMES F	05701	NEW YORK.
RHODES	BARNEY	02777	NEW YORK.
RING	MILLARD A	02201	NEW YORK.
ROSENBERG	BARRY A	09428	NEW YORK.
ROWELL	ARTHUR	07278	NEW YORK.
SAPOT	IGNACIO	04320	NEW YORK.
SCHAUMLOFFEL	HENRY J	02498	NEW YORK.
SCHOR	ALEXANDER	02135	NEW YORK.
SCHWARTZ	ISAAC	02787	NEW YORK.
SCHWARTZ	HALLY	07934	NEW YORK.
SCHWEITZER	RICHARD	06196	NEW YORK.
SERGI	JOSEPH J	02398	NEW YORK.
SERRA	WILLIAM	02618	NEW YORK.
SERRAHN	JUDY	06912	NEW YORK.
SEWARD	BARBARA A	11626	NEW YORK.
SHANNON	NEWELL C	10276	NEW YORK.
SHAPIRO	MORTON L	03653	NEW YORK.
SHAW	MATTHEW G	12656	NEW YORK.
SHEPERD	DANIEL J	10116	NEW YORK.
SMALE	RAYMON	12710	NEW YORK.
SMITH	RICHARD W	11080	NEW YORK.
SOMMER	KURT	02722	NEW YORK.
SONNERS	MELVIN	03328	NEW YORK.
SPATZER	HAROLD	03990	NEW YORK.
ST. PETER	ROBERT J	01667	NEW YORK.
ST. JOHN	HAROLD D., JR	03118	NEW YORK.
STRUNCK	HENRY	01986	NEW YORK.
TOBIAS	ED	01175	NEW YORK.
TOBIAS	GEORGE	02568	NEW YORK.
TOOLE	MICHAEL R	09325	NEW YORK.
TRAINA	ROBERT S	06275	NEW YORK.
TURINO	ALBERT P	03727	NEW YORK.
VATIER	BARBARA E	07138	NEW YORK.
VENY	MICHAEL F	05639	NEW YORK.
WEINRIB	ROBERT P	06455	NEW YORK.
WILCON	BEN R	02042	NEW YORK.
WILCON	FRANCES B	02037	NEW YORK.
WILSON	ALVA M	05928	NEW YORK.
WOLF	KENNETH N	12575	NEW YORK.
WOLFSON	JOHN	05366	NEW YORK.
WOODS	WILLIAM M	02368	NEW YORK.
WORTMAN	VINCENT W	02877	NEW YORK.
ZAWACKI	RONALD	07565	NEW YORK.
ZINNSSMEISTER	FRANK E	03014	NEW YORK.
FRANKS	TAMMY A	11988	PHILADELPHIA.
FUTAK	KATHLEEN M	04947	PHILADELPHIA.
GRADY	KATHLEEN M	10368	PHILADELPHIA.
GUERIN	ROBERT L	12647	PHILADELPHIA.
JENKINS	JOANN	13724	PHILADELPHIA.
LUALLEN	OWEN L., JR	06890	PHILADELPHIA.
WEBSTER	WENDY D	12737	PHILADELPHIA.
WILLIAM	RILEA J	07700	PHILADELPHIA.
BECK	JONATHAN P	10436	BALTIMORE.
BROCATO	MARION	03832	BALTIMORE.
CHAMPNESS	WILLIAM EDWARD	03432	BALTIMORE.
CONNOR, PAUL F., SR	02856	.....	BALTIMORE.
DAHM	MICHAEL WOLFE	05124	BALTIMORE.
DEPACE	LAWRENCE	11579	BALTIMORE.
DICARLO	SUSAN K	11689	BALTIMORE.

Last name	First name	License	Port
GUTOWSKI	LORELI MARIE	09744	BALTIMORE.
LESLIE	ROBERT A	04752	BALTIMORE.
HEMERICH	RAYMOND E	05236	BALTIMORE.
MALONE	HELEN	10404	BALTIMORE.
MOSS	JOSEPH P	09889	BALTIMORE.
PEARRE	JOYCE D	10008	BALTIMORE.
SCHOTT	ROBERT J	06518	BALTIMORE.
SHREVE	GORDON SCOTT	09511	BALTIMORE.
SWANSON	SANDRA JOAN	05808	BALTIMORE.
AUSLANDER	ROBERT	10167	WILMINGTON.
PEACOCK	ROSALIND	11385	WILMINGTON.
RUSHIN	SUSAN K	11016	WILMINGTON.
PIERCE	SCOTT	15327	SAVANNAH.
ANDERSON	BONNIE	11473	NEW ORLEANS.
AUSTIN	VIC	13942	NEW ORLEANS.
BARNES	KAREN	07668	NEW ORLEANS.
COPELAND	GREGORY	12524	NEW ORLEANS.
DAIGLE	JULIUS	04606	NEW ORLEANS.
DANIELS	TRUDY	13501	NEW ORLEANS.
DAVENPORT	BOBBY	06839	NEW ORLEANS.
GREEN	MARK	12289	NEW ORLEANS.
JACOBS	EDITH	05654	NEW ORLEANS.
KENNEDY	FRANK	04994	NEW ORLEANS.
PARRY	LAWRENCE	03074	NEW ORLEANS.
PARRY	TOMMYE	06606	NEW ORLEANS.
PEEBLES	ROBERT	13338	NEW ORLEANS.
RICARD	IVA	10132	NEW ORLEANS.
SCHNEIDER	KARL	11853	NEW ORLEANS.
SIMMONS	HARRY A	09231	NEW ORLEANS.
WITCHER	JOANNE	13623	NEW ORLEANS.
WOLFE	WILLIAM	04020	NEW ORLEANS.
BARRON	JOHN F	02043	LAREDO.
BRIONES	ADOLFO G	06644	LAREDO.
BROWN	BRUCE W	04652	LAREDO.
CAMILLI	ANTHONY	07373	LAREDO.
CANTU	HECTOR J	11812	LAREDO.
CHAPA	CARLOS	02146	LAREDO.
CISNEROS	HORTENCIA	13396	LAREDO.
CONLEY	AUSTIN L	06980	LAREDO.
COWEN	ROSALINDA	09652	LAREDO.
FAEHNER	RICHARD J	02967	LAREDO.
GARCIA	MARK E	13984	LAREDO.
GONZALEZ	JOSE R	07788	LAREDO.
GUAJARDO	EDUARDO	07070	LAREDO.
HALEY, III	RAYMOND H	13763	LAREDO.
LOCKWOOD	BETTY C	04760	LAREDO.
LOCKWOORD	HAROLD RAYMOND	01862	LAREDO.
MENDEZ	ARTHUR	02373	LAREDO.
MORTON	W.H	02735	LAREDO.
MURPHY	MERLE L	05629	LAREDO.
OCHOA	ALBA	09363	LAREDO.
PEREZ	MANUEL, JR	07986	LAREDO.
SANTOS	TEODORO, JR	03535	LAREDO.
SMITH	ALLEN E	10119	LAREDO.
SORRELL	HAZEN G	04408	LAREDO.
STANLEY	JAMES A	11981	LAREDO.
STEPHAN	ROBERT O	04852	LAREDO.
TRUST	CYRIL ARTHUR, SR	05652	LAREDO.
VALDEZ	JOSE MARIA	05871	LAREDO.
VILLARREAL	JESUS	09867	LAREDO.
VILLARREAL	EDUARDO	13683	LAREDO.
WATTS	TOM J	02299	LAREDO.
WENNING	JACK H	05375	LAREDO.
LARSON	GORDON	10712	EL PASO.
LEZAMA	ALFREDO	14396	EL PASO.
HECTOR	MENDOZA	09300	EL PASO.
ANDERSON	SANDRA GAIL	10358	PORTLAND.
EDMUNDS	DOUGLAS, A	13585	PORTLAND.
FEAREY	EDMUND G., JR	03618	PORTLAND.
HAYS	STEPHEN LOREN	14542	PORTLAND.
KANNE WEISE	LINDA, J	05749	PORTLAND.
MUSGROVE	HARLEY C	06716	PORTLAND.
SONNAD	RAHUL	12165	PORTLAND.
VAN HORN	HARLAN K	03382	PORTLAND.

Last name	First name	License	Port
WALLENMEYER	JESSE D	09071	PORTLAND.
ALBERTSON	THOMAS J	10200	SEATTLE.
ALEXANDER	CAROL A	10768	SEATTLE.
BECKER	DOUGLAS P	07537	SEATTLE.
BENENATE	THOMAS	05202	SEATTLE.
BJORK	KRISTIN	11277	SEATTLE.
BLAKE	LANETTE D	12310	SEATTLE.
BOOTH	PATRICK	12461	SEATTLE.
BOSTIC	TIMOTHY R	12085	SEATTLE.
BOURAY	DALE A	05656	SEATTLE.
BRANDYBERRY	PAUL	06550	SEATTLE.
BRINGS	DAN	04966	SEATTLE.
BUSHEE	ANDREA M	09274	SEATTLE.
CALVIN	VIRGINIA	08076	SEATTLE.
CHANMUGAM	TAMARA D	12377	SEATTLE.
CORT	DONALD L	02793	SEATTLE.
CROOK	SHARON L	04868	SEATTLE.
CURTIS	JOHN O	03302	SEATTLE.
DOWDLE	CHARLOTTE	02994	SEATTLE.
DUNGAN	MICHAEL G	03997	SEATTLE.
DYSON	CAROL A.B	12777	SEATTLE.
ELKINS	PATRICK R	11994	SEATTLE.
FRANK	SUSAN K	05831	SEATTLE.
GARRETT (DECEASED)	DENNIS C	06450	SEATTLE.
GILL	JAMES H	11017	SEATTLE.
GUNDERSON	JAY M	09559	SEATTLE.
HOPKINS	JEFFREY L	11781	SEATTLE.
JACKSON	ROBERT	05346	SEATTLE.
KAISER	JOHN	06800	SEATTLE.
LINDBERG	KRISTEN K	07390	SEATTLE.
LINNEHAN	JAMES R	05073	SEATTLE.
LUKARIS	DEBBIE A	11182	SEATTLE.
MERWIN	OWEN, JR	05891	SEATTLE.
MEYER	STEVEN R	06142	SEATTLE.
MILLER	JAMES	07916	SEATTLE.
MORGAN	RICHARD L	09584	SEATTLE.
MORRILL	EDWARD F	07035	SEATTLE.
MURRAY	ALBERT	02665	SEATTLE
NELSON	MILES G	01822	SEATTLE.
NIELSEN	RENE G	06760	SEATTLE.
PARKER	MARVIN H	03982	SEATTLE.
PETROFF	ANTHONY J	07447	SEATTLE.
RIGGS	JANET S	10771	SEATTLE.
RITTER	CHRISTOPHER	04032	SEATTLE.
RUSSELL	MAYME B	03415	SEATTLE.
SANDELL-WALTOS	SHIRLEY A	06775	SEATTLE.
SCHAEFER	MICHAEL P	07509	SEATTLE.
SHERMAN	ALVIN L	10509	SEATTLE.
SNOW	DONALD	04213	SEATTLE.
TIERNEY	MARY S	09348	SEATTLE.
TJOELKER	ANN L	07712	SEATTLE.
TOWNSEND	MICHAEL N	11282	SEATTLE.
VANDER YACHT	ARNOLD J	09733	SEATTLE.
WILLARD	EDWARD D	09631	SEATTLE.
WILLIAMS-BRINK	KIM	10682	SEATTLE.
YOUNG	PETER L	05456	SEATTLE.
BADIAS	JOAQUIN FELIPE	10894	GREAT FALLS.
COLLINS	PAULA A	13483	GREAT FALLS.
HICKS	FRANK L., JR	13594	GREAT FALLS.
BROWN	STEPHEN C	11411	MINNEAPOLIS.
CHINANDER	NANCY G	11696	MINNEAPOLIS.
DUNN	DAWN	07242	MINNEAPOLIS.
GRAHAM	JAMES ARTHUR	06235	MINNEAPOLIS.
HEMMING	LYNN A	06543	MINNEAPOLIS.
LOCKHART	DIXIE M	07415	MINNEAPOLIS.
MCMUNN	MARY K	06813	MINNEAPOLIS.
MILLS	STEPHEN D	06236	MINNEAPOLIS.
NELSON	MARMION E	09463	MINNEAPOLIS.
SPRAGUE	RICHARD T	04672	MINNEAPOLIS.
SWIFT (DECEASED)	CLARENCE J	02536	MINNEAPOLIS.
TRUDEAU	JULIA	06238	MINNEAPOLIS.
VAN KAUWENBERGH	ROBBIE (DECEASED)	12561	MINNEAPOLIS.
WALLEN	TIMOTHY	10796	MINNEAPOLIS.
ZIMMER	MARK	09874	MINNEAPOLIS.

Last name	First name	License	Port
BEATTIE	GERALDINE	09771	DETROIT.
HABARTH	DARLENE	11624	DETROIT.
HAZEL	RICHARD A	03752	DETROIT.
HODES	TRACY	15204	DETROIT.
MAGOWAN	PATRICK	09774	DETROIT.
NAHRGANG	DAVID	03576	DETROIT.
NEAL	WILLIAM	02653	DETROIT.
RUGER	RODNEY	05860	DETROIT.
STAPLETON	SCOTT	12800	DETROIT.
STERN (DECEASED)	DONALD	03217	DETROIT.
TEBBE	JOHN	05008	DETROIT.
TROTTIER	DAVID	13291	DETROIT.
VANASSCHE	THOMAS R	03828	DETROIT.
WHITMAN	MARY	06405	DETROIT.
WOOLFOLK	THELMA	06253	DETROIT.
ANDERSON	DONALD E	10834	CHICAGO.
CAMRAS	MARSHA	07184	CHICAGO.
CHARLTON	JOSEPH K	11009	CHICAGO.
DUFFIELD	AMY	11595	CHICAGO.
EGAN	THOMAS	03569	CHICAGO.
FLIKKEMA	MAYNARD	12168	CHICAGO.
GONZALEZ	FRANCISCO	13518	CHICAGO.
GRIFFIN	PATRICK M	07717	CHICAGO.
HINKLE	TODD	13098	CHICAGO.
HYNES	PAMELA A	09753	CHICAGO.
JOHNSON	CLAUDIA LYN	11585	CHICAGO.
JONES	DEBRA J	12765	CHICAGO.
LONG (DECEASED)	HARRY F	03726	CHICAGO.
MIRZA	DANIS	10131	CHICAGO.
MORENO	BEATRIZ C	12219	CHICAGO.
NIELSON	PAUL	10701	CHICAGO.
NIKLIBORC	EUGENE B	05402	CHICAGO.
PAWELKO	EDMUND C	12473	CHICAGO.
RUTHERFORD	DARCY	12714	CHICAGO.
SHIERMAN	ROBERT A	09001	CHICAGO.
STARKEY	BARBARA	07885	CHICAGO.
STEVENS	KEVIN J	12173	CHICAGO.
STORTZ	LEONA E	09208	CHICAGO.
SUPAK	JOSEPH	03132	CHICAGO.
VAN RIPER	ANTHONY	05908	CHICAGO.
WAINWRIGHT	JOHN R	14002	CHICAGO.
FINK	FRANK	04245	CLEVELAND.
IRBY	BETTY	04247	CLEVELAND.
KAWOLICS	SUSANNA M	11113	CLEVELAND.
KLEIN	STEPHEN G	11005	CLEVELAND.
MANION	DAVID	12463	CLEVELAND.
RIDER	JOHN J	13466	CLEVELAND.
SWOR	ROSEANN L	10573	CLEVELAND.
CASSIDY	PAUL FRANCIS	12502	MIAMI.
DUCH	BRETT R	14471	MIAMI.
GALLAGHER	LORETTA	13990	MIAMI.
MACTAVISH	ARIEL	14536	MIAMI.
MARTINEZ	ISILDA C	12357	MIAMI.
MAYER	SUSAN LEE	11108	MIAMI.
MCKENNA	MICHAEAL	13573	MIAMI.
METCALF	CYNTHIA	09612	MIAMI.
PIPITONE (DECEASED)	VITO	06905	MIAMI.
REYNALDO	OLAYA	13732	MIAMI.
RODRIGUEZ	ALFRECO	11724	MIAMI.
SCHNEIDER	KARL	07121	MIAMI.
TORO	ANTHONY A	03090	MIAMI.
TREVILCOCK	CLEOPATRA	15408	MIAMI.
ALEXANDER	REBECCA R	05763	HOUSTON.
ANKI	CHARLES N	04707	HOUSTON.
DAMPF	BEVERLY GROGAN	05619	HOUSTON.
FOSS	LINDA	14288	HOUSTON.
GRIFFING	KAREN D	10972	HOUSTON.
HINSCH	DALE E	06846	HOUSTON.
JOHNSTON	CYNTHIA P	10981	HOUSTON.
KUBICK	LEONARD T	07912	HOUSTON.
LECLAIR	ROBERT S	11499	HOUSTON.
MAXWELL	DONNA SUE	09878	HOUSTON.
MITTAG	MICHAEL H	14429	HOUSTON.
SANDERS	GINGER	14712	HOUSTON.

Last name	First name	License	Port
SHELLY	DANIEL O	11561	HOUSTON.
WILDERSPIN	BETTY JANE	05620	HOUSTON.
WILLIAMS	LOUIS A	11563	HOUSTON.
WOOD	MARIANNA D	09613	HOUSTON.
ARELLANO	MAJORIE	06470	DALLAS-FT. WORTH.
BOYD	RANDY	06749	DALLAS-FT. WORTH.
ELLSWORTH	PERRY K	13790	DALLAS-FT. WORTH.
FRANK	NORMA	06345	DALLAS-FT. WORTH.
GRAFF	MARGARET L	06350	DALLAS-FT. WORTH.
INGRAHAM	MARY BLANCHE	06037	DALLAS-FT. WORTH.
KENEHAN	JOHN W	06360	DALLAS-FT. WORTH.
LITTLETON	ROGER M	10214	DALLAS-FT. WORTH.
PITEK	SARAH L	09218	DALLAS-FT. WORTH.
POPE	ROBERT	09108	DALLAS-FT. WORTH.
SMITH	ROBERT D	07941	DALLAS-FT. WORTH.
TURLEY	STEPHAN E	13931	DALLAS-FT. WORTH.
WEST	TERESA C. HANCOCK	07542	DALLAS-FT. WORTH.
ZARAGOZA	JOE, JR	06484	DALLAS-FT. WORTH.
A.N. DERINGER, INC.[1]		04508	NEW YORK.
FW MYERS & CO., INC.[1]		03582	NEW YORK.
FRTIZ COMPANIES[1]		03498	NEW YORK.
GLOBE SHIPPING CO., INC.[1]		00242	NEW YORK.
TOWER GROUP INTERNATIONAL[1]		03486	NEW YORK.
W. MERCER & CO., INC.[1]		03450	NEW YORK.
FEDERAL CUSTOMS BROKERS, INC		09550	HOUSTON.
HANKYU INT'L TRANSPORT (USA) INC		04497	BOSTON.
A.O.T. EUROPE LTD		11177	NEW YORK.
ACE CUSTOMS EXPEDITERS		04070	NEW YORK.
AIR EXPRESS INTERNATIONAL AGENCY, INC		03016	NEW YORK.
AIR CLEARANCE AGENCY, INC		02959	NEW YORK.
ALCARGO INTERNATIONAL, INC		09846	NEW YORK.
ALL SERVICE IMPORT CO., INC		09991	NEW YORK.
ALMAC SHIPPING CO., INC		05341	NEW YORK.
APOLLO CUSTOMS SERVICE, INC		10612	NEW YORK.
ARROW INTERCONTINENTAL CUSTOMS BROKERAGE.		11800	NEW YORK.
CALLPORT INTERNATIONAL, INC		14415	NEW YORK.
CARGO BROKERS LIMITED		09331	NEW YORK.
CONTINENTAL AIR CARGO		03935	NEW YORK.
ELCO SHIPPING CORP		04136	NEW YORK.
F.B. VANDERGRIFT CO., INC		06783	NEW YORK.
HUDSON SHIPPING CO., INC		0237A	NEW YORK.
J.F.M.N.Y., INC		09106	NEW YORK.
JG MAZZARISE BROKER CORP		11128	NEW YORK.
KOG TRANSPORT, INC		10716	NEW YORK.
KURZ ALLEN, INC		10339	NEW YORK.
LITT INTERNATIONAL, INC		09851	NEW YORK.
MARVIN CUSTOMS CLEARANCE		07145	NEW YORK.
MCGREGOR SEA & AIR SERVICES, INC		05017	NEW YORK.
MEGA FREIGHT SERVICES, LTD		09147	NEW YORK.
METRO WORLDWIDE SERVICES		13316	NEW YORK.
MRH BROKERS, INC		13814	NEW YORK.
MULTI PROCESS INTERNATIONAL (USA) CORP.		09478	NEW YORK.
NAUTILUS CUSTOMS SERVICE		14093	NEW YORK.
NORSE SHIPPING SERVICES, INC		05307	NEW YORK.
PUBLIC BROKERS INTERNATIONAL, INC		06603	NEW YORK.
R N FORWARDING CO., INC		02973	NEW YORK.
RHENUS TRANSPORT INTERNATIONAL CORP		09691	NEW YORK.
J.D. MACDONALD & CO., INC		07866	NEW YORK.
SAXON FORWARDING, INC		13884	NEW YORK.
SPARTAN WORLDWIDE DELIVERY, INC		13105	NEW YORK.
STATESIDE CUSTOM BROKERAGE CORP		06692	NEW YORK.
SURFACE FREIGHT CORP		02361	NEW YORK.
TAUB & CARMEL, INC		05581	NEW YORK.
UNIVERSAL FREIGHT SPECIALISTS, INC		14145	NEW YORK.
UNIVERSAL TRANSCONTINENTAL CORP		01976	NEW YORK.
WORLD LOGISTICS SYSTEMS		10135	NEW YORK.
WORLDWIDE INTEGRATED DIST. ENTERPRISES CORP.		11723	NEW YORK.
WTC OCEAN FREIGHT, INC		09998	NEW YORK.
B&R CUSTOMS BROKER, INC		06957	LAREDO.
E. GUAJARDO & ASSOC., INC		11364	LAREDO.
H.C. INT'L U.S. CUSTOMHOUSE BROKER, INC		13137	LAREDO.

Last name	First name	License	Port
H.R. LOCKWOOD & COMPANY, INC		05495	LAREDO.
RIO BRAVO CUSTOMS BROKERAGE, INC		15030	LAREDO.
SANDRA HERRERA, INC		11965	LAREDO.
ABI CONNECTION, INC		14094	CHICAGO.
ALPHA BROKERS CORP		12296	MIAMI.
PERISHABLE EXPRESS, INC		14584	MIAMI.

[1] THESE LICENSES OF MULTIPLE LICENSE. THESE COMPANIES ARE STILL IN BUSINESS.

Dated: August 24, 1998.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 98–23089 Filed 8–26–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''The Cecil Family Collects: Four Centuries of Decorative Arts From Burghley House''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, ''The Cecil Family Collects: Four Centuries of Decorative Arts From Burghley House'' (See list), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at Cincinnati Art Museum, Cincinnati, OH, from on or about November 21, 1998, through January 17, 1999; Society of the Four Arts, Palm Beach, FL, from on or about February 13, 1999, to April 11, 1999; New Orleans Museum of Art, New Orleans, LA, from on or about May 8, 1999, through July 4, 1999; Santa Barbara Museum of Art, Santa Barbara, CA, from on or about August 1, 1999, through October 10, 1999; Lakeview Museum of Arts and Sciences, Peoria, IL, from on or about November 6, 1999 through January 2, 2000 and Columbia Museum of Art, Columbia, SC, from on or about January 22, 2000, through March 19, 2000 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW Washington, DC 20547–0001.

Dated: August 21, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–23076 Filed 8–26–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Object Imported for Exhibition Determination: ''From Van Eyck to Bruegel: Early Netherlandish Paintings in the Metropolitan Museum of Art''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, ''From Van Eyck to Bruegel: Early Netherlandish Paintings in the Metropolitan Museum of Art'' (see list), imported from abroad for the temporary exhibition without profit, within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the listed objects at the Metropolitan Museum of Art from September 14, 1998, to January 3, 1999 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul Manning, Assistant General Counsel, Office of the General counsel, 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 21, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–23075 Filed 8–26–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Russian-U.S. Young Leadership Fellows

ACTION: Request for proposals.

SUMMARY: Subject to the availability of funds, the Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a program to administer the recruitment, selection, placement, monitoring, evaluation and follow-on activities for the FY99 Russian-U.S. Young Leadership Fellows. Organizations with less than four years of experience in conducting international exchange are not eligible for this competition.

The Russian-U.S. Young Leadership Fellows Program is a new initiative that will target outstanding Russian and American college graduates who demonstrate leadership skills and an interest in public service. The objective of the program is to enrich the education and experience of young people who show the promise of contributing to the betterment of their own country and to the increased mutual understanding between the two countries. A total of approximately 65–100 Russian-U.S. Young Leadership Fellows (15–20 American and 50–80 Russian) will be sponsored for a one-year, non-degree program in the partner country that will include an academic year of study at an eligible institution of higher education followed by a four-twelve week internship program. Academic and internship programs

should complement one another and should focus on topics relevant to leadership, governance, and public service. Fields of study will include but not be limited to: political science, government, history, international relations, economics, conflict resolution, and cultural studies. Eligible applicants from both countries will be graduates of college or college-equivalent programs below the age of 30.

USIA anticipates awarding one grant for this program. Should an applicant organization wish to work with other organizations in the implementation of this program, USIA prefers that a subcontract arrangement be developed. USIA will entertain separately submitted proposals for joint program management, but the proposals must demonstrate a value-added relationship, and must clearly delineate responsibilities so as not to duplicate efforts.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hayes Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number *E/AEE–99–04.*

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time, on *Friday, October 2, 1998.* Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants should begin November 1998.

FOR FURTHER INFORMATION CONTACT: The Academic Exchange Division, European Programs Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, telephone (202) 205–0525 and fax (202) 260–7985, sgovatsk@usia.gov to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet:

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via fax on Demand:

The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer *Sondra Govatski* on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants may follow all instructions given in the Solicitation Package. The original and *nine* copies of the application should be sent to: U.S. Information Agency, Ref.: *E/AEE–99–04,* Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support of Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Drafts of all printed materials developed for this program should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The USIA reguests that it receive the copyright use and be allowed to distribute the material as it sees fit.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. Awards may not exceed *$2.162 million,* and preference will be given to organizations whose requested administrative and indirect costs are below 20% of the total grant award.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) U.S.-based administrative costs.

(2) Russia-based administrative costs.

(3) Program costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the Russian USIS posts. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Development and Management: Proposals should exhibit originality, substance, precision, innovation, and relevance to Agency mission. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve students in their U.S. communities.

3. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, and should include a strategy for achieving diverse applicant pools for both students and host institutions.

4. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. Follow-on and Alumni Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

6. Project Evaluation: Proposals should include a plan to evaluate the program's success, both during and after the program. USIA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. Cost-effectiveness and Cost Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Option for Renewals

Subject to the availability of funding for FY 2000 and FY 2001, and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: August 19, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–22851 Filed 8–26–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 166

Thursday, August 27, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket 86-285, FCC 98-87]

Schedule of Application Fees

Correction

In rule document 98–21371 beginning on page 42735 in the issue of Tuesday, August 11, 1998, make the following correction:

§ 1.1104 [Corrected]

On page 42744, in §1.1104, under ''Fee Amount'', in the third entry ''690'' should read ''725''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 8774]

RIN 1545–AW15

Kerosene Tax; Aviation Fuel Tax; Tax on Heavy Trucks and Trailers

Correction

In rule document 98–17400 beginning on page 35799 in the issue of Wednesday, July 1, 1998, make the following corrections:

§ 48.4082–8T [Corrected]

1. On page 35802, in the second column, the first paragraph should read, ''Name, address, and employer identification number of seller

_____ (''Buyer'')
Name of Buyer

certifies the following under penalties of perjury:''.

§ 48.6427–11T [Corrected]

2. On page 35804, in the second column, in § 48.6427–11T, in paragraph (c)(4), the fourth line should read ''paragraph (e) of this section''.

BILLING CODE 1505-01-D

Federal Register

Thursday
August 27, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, et al.

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, and 135

[Docket No. 29318; Notice No. 98–12]

RIN 2120–AG35

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to ban, in certain domestic operations, the transportation of devices designed to chemically generate oxygen, including devices that have been discharged and newly manufactured devices that have not yet been charged for the generation of oxygen, with limited exceptions. These devices could, if inadvertently transported when charged, initiate or provide a secondary source of oxygen to fuel a fire. This proposed ban is intended to enhance aviation safety by reducing the risk of human error in recognizing whether such a device is charged or has been discharged.

DATES: Comments must be received on or before October 26, 1998.

ADDRESSES: Comments on this notice may be delivered or mailed, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–98–29318; 400 Seventh St., SW., Rm. Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except federal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Catey, Flight Standards Service, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591. Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. 29318.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 1–800–FAA–ARAC).

Internet users may reach the FAA's webpage at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

I. Background

A. Accident Involving Chemical Oxygen Generators

On May 11, 1996, ValuJet flight 592 crashed into an Everglades swamp shortly after takeoff from Miami International Airport, Florida. Both pilots, the three flight attendants, and all 105 passengers were killed. Before the accident, the flight crew reported to air traffic control that it was experiencing smoke in the cabin and cockpit. The evidence indicates that five fiberboard boxes containing as many as 144 chemical oxygen generators, most with unexpended oxidizer cores, and three aircraft wheel/tire assemblies had been loaded in the forward cargo compartment shortly before departure. These items were being shipped as company material. Additionally, some passenger baggage and U.S. mail were loaded into the forward cargo compartment, which had no fire/smoke detection system to alert the cockpit crew of a fire within the compartment. On August 19, 1997, the NTSB issued its aircraft accident report entitled ''In-Flight Fire and Impact With Terrain; ValuJet Airlines Flight 592.'' In that report, the NTSB determined that one of the probable causes of the accident resulted from a fire in the airplane's Class D cargo compartment that was initiated by the actuation of one or more of the chemical oxygen generators being improperly carried as cargo.

B. Incidents Involving Chemical Oxygen Generators

In addition to the ValuJet accident discussed above, the FAA and the NTSB have investigated as many as 20 other incidents involving chemical oxygen generators, all caused by either undeclared, improperly packaged, or mishandled units. Fortunately, none of these incidents resulted in loss of life; however, they show the various ways in which chemical oxygen generators can pose dangers. The NTSB's August 19, 1997, accident report on the crash of ValuJet flight 592 also cited the following incidents:

(1) On August 10, 1986, an American Trans Air McDonnell Douglas DC–10–40 arrived without incident at Chicago's O'Hare International Airport; however, after the passengers and crew had deplaned, a fire spread rapidly throughout the entire cabin and destroyed the airplane. The National Transportation Safety Board (NTSB) concluded that the fire started as a result of a mechanic's improper handling of a chemical oxygen generator inside a seatback that was being shipped as company material. (The NTSB

learned as a consequence of this incident that some air carriers were not taking the required precautions when shipping chemical oxygen generators and were not aware that solid-state passenger supplemental chemical oxygen generators were capable of generating high temperatures and were classified as hazardous materials when carried as company material in cargo compartments.)

(2) On February 19, 1988, Eastern Airlines flight 215 carrying 131 passengers and 6 crewmembers experienced an in-flight fire but reached its destination safely. A chemical oxygen generator, taken out by a flight attendant while assisting a passenger who was complaining of shortness of breath, malfunctioned and was laid aside on the shelf of a beverage cart; it was then covered with a damp linen napkin for cooling. The cart, with the hot oxygen generator, was later put into the forward galley and several minutes later the linen napkin and other material in the galley caught fire. Flight attendants extinguished the fire with halon fire extinguishers.

(3) On November 7, 1992, an air cargo package fire broke out at a Wilson UTC, Inc., freight-forwarder facility in North Hollywood, CA, where cargo was being loaded into a container that was to have been subsequently loaded onto a Qantas Airways flight. The container was moved to a concrete area where the fire was extinguished. The fire was caused by a chemical oxygen generator being shipped without proper papers, not marked or labeled in accordance with hazardous materials regulations, and not properly assembled.

(4) On September 24, 1993, a burning cargo container was unloaded from an aircraft at a Federal Express facility in Oakland, CA. As with the Wilson UTC incident described above, a chemical oxygen generator had been shipped without proper papers, not marked and labeled in accordance with hazardous materials regulations, and not properly assembled.

(5) On October 21, 1994, a box containing 37 chemical oxygen generators caught fire at an Emery Worldwide building in Los Angeles, CA. Once again, the box of chemical oxygen generators was found to have been shipped without proper papers, not properly marked and labeled, and not properly assembled and packaged.

(6) On January 26, 1996, an undeclared shipment of 11 chemical oxygen generators was discovered during the loading of an America West aircraft in Las Vegas, NV. A maintenance technician noticed partially obscured hazardous materials labels and opened the package to discover the chemical oxygen generators, packed at random, most with their actuating devices in the firing position, one with no retaining pin inserted.

(7) On April 12, 1997, one of Continental Airlines' contract maintenance companies shipped seven chemical oxygen generators on Continental flight 190. The chemical oxygen generators were loosely packed in a box containing a life vest and their percussion firing mechanisms were in the ''disarmed'' position. The shipping papers listed the contents of the box simply as ''aircraft parts.''

C. National Transportation Safety Board (NTSB) Recommendation

On May 31, 1996, the NTSB issued Recommendation A–96–29, which stated that the Research and Special Projects Administration (RSPA) should, ''in cooperation with the Federal Aviation Administration, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates, and the chemical core has not been depleted.'' (Class I, Urgent Action)

D. Research and Special Programs Administration (RSPA) Actions

On May 24, 1996, RSPA published an interim final rule in the **Federal Register** (61 FR 26418), which temporarily prohibited the offering for transportation and the transportation of chemical oxygen generators as cargo in passenger-carrying operations. The RSPA interim final rule was adopted as a final rule on December 30, 1996 (61 FR 68952), resulting in the permanent ban on carrying chemical oxygen generators as cargo on all passenger-carrying operations. On the same date, RSPA proposed to limit the carriage of oxidizers, including compressed oxygen, to accessible locations on all-cargo operations, and prohibit such oxidizers from being transported in all passenger-carrying aircraft (61 FR 68955, Dec. 30, 1996).

On June 5, 1997, RSPA adopted a more specific shipping description for chemical oxygen generators to make it easier for carriers to identify these devices, and also specified additional packaging requirements (see 49 CFR 171.101 (62 FR 30770–30771, June 5, 1997)). If a chemical oxygen generator is shipped with its means of initiation attached, the generator must incorporate at least two positive means of preventing unintentional initiation, and be classed and approved by RSPA. A person who offers a chemical oxygen generator must: (1) Ensure that the generator is offered in conformance with the conditions of the approval; (2) maintain a copy of the approval at each facility where the chemical oxygen generator is packaged; and (3) mark the approval number on the outside of the package (see 49 CFR 171.102, special provision 60 (62 FR 30772, June 5, 1997, and 62 FR 34669, June 27, 1997)). When transported by air (on all-cargo aircraft), a chemical oxygen generator must conform to the provisions of the approval issued by RSPA and be contained in a packaging prepared and originally offered for transportation by the approval holder (see 49 CFR 171.102, special provision A51 (62 FR 30772, June 5, 1997)).

On August 20, 1997, RSPA published a Supplemental Notice of Proposed Rulemaking (SNPRM) (62 FR 44374) to determine whether the proposed oxidizer prohibition should extend to Classes B and C compartments on passenger-carrying aircraft. RSPA also proposed in the SNPRM to completely prohibit the carriage of chemical oxygen generators that have been discharged (''spent'') and to prohibit the carriage of personal-use chemical oxygen generators on passenger-carrying aircraft (see also 61 FR 68955, Dec. 30, 1996).

E. Design of Cargo Compartments Aboard Aircraft

Various features incorporated into the designs of cargo compartments are intended to control or extinguish fires that might occur. Under the Federal Aviation Regulations, cargo compartments in transport category aircraft are classified into five categories, Classes A, B, C, D, and E (14 CFR 25.857). Although the FAA has not classified cargo compartments in non-transport category aircraft, the FAA believes that the same risks also apply to compartments in non-transport category aircraft that share similar design features. It should be noted that none of the compartments are designed to control fires fueled by chemical oxygen generators. In brief, the five classes of compartments are as follows:

Class A Compartments

A Class A compartment is one which is easily accessible in flight and in which the presence of a fire would be easily discovered by a crewmember.

Class B Compartments

A Class B compartment is one which is completely accessible in flight to a crewmember with a hand held fire extinguisher; from which no hazardous quantities of smoke, flames, or extinguishing agent will enter any

compartment occupied by the crew or passengers when the compartment is being accessed; and in which an approved smoke detector or fire detector system is installed.

Class C Compartments

A Class C compartment is not accessible but has an approved smoke detector or fire detector system, an approved built-in fire-extinguishing system, a means to control ventilation and drafts so that the extinguishing agent can control a fire that starts within the compartment, and a means to exclude hazardous quantities of smoke, flames or extinguishing agent from any compartment occupied by crew or passengers.

Class D Compartments

A Class D compartment is designed to control ventilation and drafts. The compartment volume does not exceed 1,000 cubic feet, and there are means to exclude hazardous quantities of smoke, flames or noxious gases from any compartment occupied by crew or passengers. Its design is intended to confine and control the severity of a fire by limiting air flow. For a compartment of 500 cubic feet (cu. ft.) or less, an air flow of 1500 cu. ft. per hour (three air exchanges per hour) is acceptable. On February 17, 1998, the FAA issued a final rule (63 FR 8032) that requires that compartments designated as Class D on passenger-carrying aircraft used in part 121 operations meet fire detection and suppression standards for Class C compartments, as applicable, by the year 2000. In addition, the final rule requires that, for all-cargo part 121 operations, Class D compartments meet at least the detection standards of Class E compartments.

Class E Compartments

A Class E compartment is found on all-cargo aircraft, has an approved smoke or fire detector system, a means to shut off the ventilating airflow, a means to exclude hazardous quantities of smoke, flames or noxious gases from the flight crew compartment, and required crew emergency exits are accessible under any cargo loading condition.

II. Today's Proposed Action

The actions proposed in this notice, in conjunction with RSPA's actions regarding chemical oxygen generators, are responsive to the NTSB's recommendations and are based on FAA's assessment of possible human errors in identifying a device designed as a chemical oxygen generator that is charged versus one that has never been charged or has been previously discharged. The FAA proposes to define a ''device designed as a chemical oxygen generator'' as a device that: (1) Is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed; (2) has been discharged, and thus has already produced oxygen by chemical reaction, regardless of whether there is residue remaining in the device; and (3) is newly manufactured but not charged with chemicals for the generation of oxygen. The FAA also proposes to include, in 14 CFR 119.3, the same definition of chemical oxygen generator that is currently found in 14 CFR 25.1450, i.e., ''a device which produces oxygen by chemical reaction.'' The FAA's definition differs slightly from RSPA's, as finalized in its May 24, 1996 interim final rule (61 FR 26418), which defines an oxygen generator (chemical) as '' a device containing chemicals that upon activation release oxygen as a product of chemical reaction.'' Although worded slightly differently, the FAA does not view these definitions as being in direct conflict. Nevertheless, the FAA requests comments as to whether the inclusion of the part 25 definition of chemical oxygen generator in § 119.3 causes confusion for air carriers and hazardous materials shippers/offerors.

The FAA is very concerned about the possibility of the packaging of a device designed as a chemical oxygen generator being mismarked because of the hazards posed by such devices. In certain circumstances, devices designed as chemical oxygen generators can initiate fires on aircraft. Even in cases where they are shipped in accordance with the Hazardous Materials Regulations (HMR's) (49 CFR parts 171–180) and do not actually start a fire, their presence may contribute to the severity of a fire by providing a secondary source of oxygen not otherwise present. Therefore, the FAA believes that the transportation of these items poses an unacceptable risk in both domestic (1) passenger-carrying operations conducted under 14 CFR parts 91, 121, 125, and 135, and (2) all-cargo operations conducted under 14 CFR parts 91, 121, 125, and 135 when those items are transported in cargo compartments that are not equipped with fire/smoke detection systems. The prohibition would not, however, extend to those devices designed as chemical oxygen generators that are installed in an aircraft to conform with aircraft type-certification requirements or are present to conform with, or permitted to be carried under, FAA operating rules for a particular flight.

The FAA notes that the proposed prohibition on the carriage of devices designed as chemical oxygen generators would overlap, in some instances, with RSPA's final and proposed hazardous materials regulations. The FAA would not charge a person with the same violation of both FAA's and RSPA's rules to enhance the sanction sought. Accordingly, the FAA would not seek more than a single civil penalty for any one violation; however, there are situations in which two sanctions for a violation might be appropriate. For example, a violation might warrant remedial certificate suspension or revocation because a certificate holder's qualifications to hold a certificate might be at issue. At the same time, a civil penalty for that violation might also be warranted.

A. Passenger-Carrying Operations

The FAA proposes to ban the transportation of any device designed as a chemical oxygen generator aboard domestic passenger-carrying aircraft conducting operations under parts 91, 121, 125, and 135 of the Federal Aviation Regulations. The ban would also apply to any person who carries or acts in any manner that could result in the carriage (shipment) of devices that are the subject of the proposed ban; therefore, any person who attempts to offer such devices for carriage on board a domestic aircraft, even if not successful, would be in violation of the prohibition.

Devices designed as chemical oxygen generators can produce a secondary source of oxygen not otherwise present aboard an aircraft. A fire in an oxygen-enriched environment increases the risk that control of the aircraft will be lost. This may be caused by damage to the aircraft's flight control cables, hydraulic systems, or electrical systems. In addition, compared to a fire that is not in an oxygen-enriched environment, a fire that is fed by a secondary source of oxygen increases the risk that the flames and resultant toxic fumes and smoke will cause injuries or death. The heat generated from charged and activated chemical oxygen generators, including what is sometimes referred to as ''hotel oxygen'' or ''executive emergency oxygen kits,'' could cause a fire to start in clothing, paper, and other items that might be carried near these devices. Even if these devices do not initiate a fire, they could become involved in a fire started elsewhere and feed the fire with oxygen.

The FAA believes that for passenger-carrying operations, the most prudent

thing to do is to ban, in the cabin and in all cargo compartments, the carriage of devices designed as chemical oxygen generators. These devices would be banned in both the cargo areas and cabins of passenger-carrying aircraft operated under parts 91, 121, 125, and 135 of the Federal Aviation Regulations, unless those devices were installed in that aircraft for the aircraft to be in conformity with aircraft type-certification or are otherwise permitted to be carried under FAA operating rules for that particular flight.

This proposed rule supplements RSPA's December 30, 1997 final rule (61 FR 68952) prohibiting chemical oxygen generators from being shipped as cargo aboard aircraft engaged in passenger operations. Specifically, the proposed rule applies to devices designed as chemical oxygen generators; therefore, this proposed ban applies to devices that are newly manufactured but are not charged with chemicals for the generation of oxygen. The FAA believes that these devices might be manufactured in one location and transported to another location to be charged. This could lead to human errors in determining whether the device designed as a chemical oxygen generator has been charged. The FAA specifically requests comments on whether these devices are manufactured in one location, but charged in another location.

The proposed ban would also apply to fully charged devices that contain a chemical or chemicals that produce oxygen by chemical reaction. Although the prohibition of fully charged devices is similar to RSPA's final prohibition (61 FR 68952), the FAA believes that it is necessary to include it in this rulemaking so as to avoid the confusion of an operator having to consult two different sets of regulations to determine whether fully charged chemical oxygen generators are banned from passenger-carrying operations.

The FAA's proposed ban also would apply to devices designed as chemical oxygen generators that have been discharged and have only some residue remaining or have had all of the chemicals consumed in the generation of oxygen (spent chemical oxygen generators) in both passenger-carrying and all-cargo operations under parts 91, 121, 125, and 135. The FAA believes that there would be an increase in safety by banning all chemical oxygen generators in passenger-carrying operations, even if those devices are believed to have been previously discharged. From reports about the ValuJet accident, it appears that some people might have believed that the chemical oxygen generators had been previously discharged, when in fact they had not. While it may be true that a chemical oxygen generator that has been discharged does not present an actual fire or smoke threat to aviation, human errors in assessing whether such devices have been discharged can result in catastrophes. The FAA believes that the public interest in reducing the possibility of this type of human error, which could result in loss of life and property, outweighs any public or private interest in the transportation of devices designed as chemical oxygen generators on passenger-carrying operations conducted by air carriers and other commercial operators.

In addition to the general rationale provided above to support the proposed ban on the transportation of devices designed as chemical oxygen generators, the FAA believes that there is additional rationale to support the ban in specific classes of cargo compartments in transport-category aircraft. Although the FAA has not classified the cargo compartments in non-transport category aircraft, the following discussion and analysis of risks in Classes B, C, and D cargo compartments also applies to cargo compartments in non-transport category aircraft that share similar design features.

Concerns Regarding Class B Compartments

One major concern regarding fires in Class B compartments is that the supplemental oxygen breathing system for passengers is not designed to be a system that would protect them from smoke and fumes. Instead, the supplemental oxygen system for passengers was designed to provide a combination of supplemental oxygen and ambient cabin air for use in emergency depressurization situations. When passengers use the supplemental oxygen system, they continue to inhale some amount of ambient air in the cabin. Dangerous or even fatal levels of smoke and fumes are more likely to develop when a fire is fed by a secondary source of oxygen, and would be inhaled by passengers in such a situation. Thus, a fire fed by a secondary source of oxygen creates additional smoke and fume risks to passengers that would not otherwise be present in fires that are not fed by a secondary source of oxygen.

Another problem is that, although all areas of the Class B compartment must be accessible to the contents of a hand-held fire extinguisher, devices designed as chemical oxygen generators in such compartments may not be readily accessible and easily removed from the location of the fire. In other words, in a Class B compartment the crewmember might not be able to quickly remove a device designed as a chemical oxygen generator from the fire area because of its size, weight, or location. Even if a halon or water fire extinguisher is present, it may not have a sufficient quantity of halon or water to extinguish a fire that continues to re-ignite because it is being fed by a secondary source of oxygen.

Concerns Regarding Class C Compartments

Like Class B compartments, Class C compartments may not adequately protect passengers if an oxygen-fed fire exists. The current means of suppression in Class C compartments is halon. Halon, however, will not always suppress an oxygen-fed fire, and thus the FAA believes it would be in the public interest to ban devices designed as chemical oxygen generators from Class C compartments. Additionally, unlike a Class B compartment that a crewmember can enter, a Class C compartment is not accessible to crewmembers. While the design of a Class C cargo compartment can be very effective in fighting most types of fires, the FAA believes that oxygen-fed fires present an unacceptable risk in this environment since a crewmember cannot remove a device designed as a chemical oxygen generator from the area of the fire.

Concerns Regarding Class D Compartments

Class D cargo compartments have the same problems as Class B and Class C compartments. In addition, smoke and fire detection devices are not required in Class D compartments. The first indication of a fire is generally in the form of smoke or fumes entering the cabin or the flight deck. Another initial indication might be that the passengers or crew realize that the passenger compartment floor has become hot. By the time the flight crew realizes that there might be a fire in the Class D compartment, it may be too late to save the aircraft by making an emergency landing. Also, the crew cannot take direct firefighting measures against a fire in a Class D compartment. Even indirect firefighting measures, such as attempting to starve the fire of oxygen by depressurizing the aircraft, will not be effective if a fully charged device designed as a chemical oxygen generator is involved in the fire. Ultimately the safety of the flight depends on the actions of the crew, and time is of the essence. Since entry into a Class D compartment is not possible, and

depressurization of the cabin with passengers is impractical, the only way the crew could save the aircraft would be to land it as soon as possible, and their ability to do so would depend on the availability of a suitable landing site.

B. All-Cargo Operations

The FAA is also proposing to ban the transportation of any device designed as a chemical oxygen generator in domestic, ''all-cargo operations'' (as defined in 14 CFR 119.3) conducted under parts 91, 121, 125, and 135 of the Federal Aviation Regulations, with limited exceptions. The ban would apply to any person who carries or acts in any manner that would result in the carriage (shipment) of devices that are the subject of the proposed ban. Much of the analysis of the potential dangers of shipping devices designed as chemical oxygen generators and the possibility of human error in passenger-carrying operations also apply to all-cargo operations. Transport-category aircraft used in all-cargo operations often have Class E compartments that are not found in passenger-carrying, transport-category aircraft.

Exception To Allow for the Transportation of Chemical Oxygen Generators in All-Cargo Operations

The FAA is proposing to allow all-cargo operators under 14 CFR parts 91, 121, 125 and 135 to carry *unexpired* chemical oxygen generators under certain circumstances in both transport and non-transport category aircraft. This exception to the general prohibition would not, however, permit the carriage of those devices designed as chemical oxygen generators that have previously been discharged or those that are newly manufactured but are not charged for the generation of oxygen. Further, a chemical oxygen generator that has passed its expiration (i.e., time-in-service) date is not eligible for the exception, and thus cannot be carried as cargo in an all-cargo operation. Neither the FAA nor RSPA specify the expiration date for such chemical oxygen generators in their regulations. Rather, the expiration date is established through the aircraft certification process and then incorporated into an operator's aircraft inspection program or, in the case of an air carrier with a continuous airworthiness maintenance program, incorporated into its maintenance time limitations.

This proposed exception differs from RSPA's December 30, 1996 final rule, which would allow the carriage of chemical oxygen generators aboard aircraft used in all-cargo operations, regardless of the expiration date on the generators. This is because RSPA views any chemical oxygen generators, whether expired or unexpired, as having the same inherent risk. The FAA believes, however, that a human performance problem exists that makes the distinction between expired and unexpired generators important. The FAA is concerned that an individual may mistakenly believe that an ''expired'' chemical oxygen generator is, in effect, no longer a hazard, and thus can be shipped without any of the safeguards imposed by the HMR's. Therefore, to avoid such a mistake, the FAA proposes to ban the shipment of ''expired'' chemical oxygen generators aboard both passenger and all-cargo operations. Accordingly, if finalized, a person would be in violation of FAA's prohibition if he or she offered ''expired'' chemical oxygen generators for carriage aboard a domestic all-cargo aircraft, notwithstanding the fact that RSPA's rules permit such carriage. The FAA specifically requests comment on whether the proposed ban on air shipment of ''expired'' chemical oxygen generators would negatively impact all-cargo operations.

The proposed exception for domestic all-cargo operations is therefore limited to the carriage of *unexpired* chemical oxygen generators (i.e., those that are charged but whose expiration dates have not yet passed), provided that the generators are: (1) Originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102(c)); (2) labeled and loaded in accordance with the HMRs (49 CFR parts 171–180); (3) separated from other cargo before flight; and (4) restricted to the quantity limits specified in the HMR's.

The FAA believes that the proposed exception to the ban in all-cargo operations strikes the appropriate safety balance for the following reasons: (1) requiring packaging by a RSPA Special Provision 60 approval holder, as well as compliance with the HMR labeling and loading requirements for chemical oxygen generators would reduce the likelihood that accidental activation would occur; (2) the separation requirement, which is broader in scope than RSPA's separation requirement, would reduce the likelihood that such generators are placed beside incompatible hazardous materials, as well as other cargo; and (3) the quantity limitation would ensure that excess carriage of these devices on any one flight does not occur. RSPA's regulations provide physical and performance standards for segregating certain incompatible materials, including oxidizing substances, from other hazardous materials on aircraft (49 CFR 175.78). FAA's proposal is broader in scope, however, in that devices designed as chemical oxygen generators would have to be separated from all other cargo before flight, not just other incompatible hazardous materials. The FAA specifically requests comments on this approach.

The FAA recognizes that the crew in an all-cargo part 121 operation would have access to protective breathing equipment (PBE) (both smoke and fume and firefighting), which would enable them to function and survive in a fire, smoke and toxic fume environment for a longer period than the crew in a part 135 operation. This is because part 135 operators are not required to have PBE aboard an aircraft. Therefore, the FAA may consider, for a future rulemaking, the extent to which PBE, such as smoke and fume PBE, should be required for part 135 operators transporting certain hazardous cargo.

The FAA requests comment on whether it would be helpful if both RSPA and FAA were to provide cross-references to each other's respective regulations as they pertain to devices designed as chemical oxygen generators. Such cross-referencing would serve to notify all hazardous materials shippers/offerors as well as aircraft operators that they must comply with both FAA and RSPA regulations when shipping devices designed as chemical oxygen generators. The FAA also requests comment on how best to inform foreign shippers of the FAA restrictions on the carriage of devices designed as chemical oxygen generators on aircraft operated under parts 91, 121, 125 and 135 of the Federal Aviation Regulations.

III. Exceptions for Materials and Devices That Are Required Parts of the Aircraft or That Are Otherwise Required or Permitted To Be Carried Under FAA Operating Rules

The FAA believes that oxygen devices required to be in aircraft as specified in the FAA's certification and operating rules are safe, as they are maintained in accordance with approved maintenance and airworthiness programs, and are essential for the safety of the crew and passengers. Therefore, devices designed as chemical oxygen generators that are installed in aircraft to conform with aircraft type-certification requirements, or are present to conform with, or permitted to be carried under, FAA operating rules for that particular flight are exempt from the proposed ban. This exception for the carriage of devices designed as chemical oxygen generators under the FAA operating rules is

limited to those items that are required for the particular operation flown, so as to preclude operators from pre-positioning such devices in circumvention of the prohibition.

IV. Economic Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the proposed rule would generate benefits that justify its costs and is not an economically significant regulatory action as defined in Executive Order 12866; however, it is considered significant under the Executive Order and DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, because of the public interest involved. The FAA certifies that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because almost no newly manufactured devices designed as chemical oxygen generators are expected to be transported by air. The FAA also certifies that this proposed rule, if adopted, will not constitute a barrier to international trade and does not contain any Federal intergovernmental or private sector mandates; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866.

Overview

This proposed rule would ban, in certain aircraft, the transportation of devices designed to chemically generate oxygen, including devices that have been discharged and newly manufactured devices that have not yet been charged for the generation of oxygen.

For the following reasons, a shortened regulatory evaluation will be prepared for this proposed rule, which will serve as both the summary and full regulatory evaluation. All but one of the requirements of this proposed rule have been covered and analyzed by the regulatory evaluation prepared for RSPA's supplemental notice of proposed rulemaking (SNPRM) (62 FR 44374, Aug. 20, 1997). A copy of the full regulatory evaluation for that SNPRM is included in the docket for this proposed rule. The one requirement not covered by RSPA's SNPRM represents the proposed ban for newly manufactured devices that have not yet been charged for the generation of oxygen. That is, this proposed rule includes the ban for newly manufactured devices. Since these newly manufactured devices have little or no economic value and are not considered to be time-critical, they are not expected to be shipped by air. Thus, little or no costs (quantitative or qualitative) are expected to be imposed on the U.S. aviation community. These newly manufactured devices are expected to generate only qualitative safety benefits (such benefits will be discussed in more detail below in the benefits section). Therefore, it is for this reason that the evaluation for this proposed rule will only focus on the potential costs and benefits associated with banning the newly manufactured devices on aircraft operators conducting their operations under parts 91, 121, 125, and 135.

Costs

The FAA has determined that this proposed rule would not impose any additional costs on the U.S. aviation community. Based on conversations with industry and FAA technical personnel, it is unlikely that the newly manufactured devices would be shipped by air because they have little or no economic value. Oxygen generators go through several stages of processing before becoming a fully functional and valued commodity. Because they are shipped in large quantities and not considered to be time-critical, newly manufactured devices are likely to be shipped by rail and truck to the final processing plant(s) for future use as oxygen generators. While the FAA believes this cost assessment to be reasonably accurate, there is still a small element of uncertainty about coverage of all of the potential costs associated with newly manufactured devices. As the result of this uncertainty, the FAA solicits comments from the aviation community as to accuracy of this assessment. The FAA requests that comments be as detailed as possible and cite or include supporting documentation.

Benefits

This proposed rule is considered to be complementary to RSPA's SNPRM and would generate potential qualitative benefits by ensuring that the enhanced safety benefits of RSPA's SNPRM would be fully realized. This task would be accomplished by reducing the risk of human error in recognizing whether such a device is charged or has been charged, and which could, if inadvertently transported aboard an airplane when charged, initiate or provide a secondary source of oxygen to fuel a fire. While the chance of newly manufactured devices being shipped by air is small, it still could happen in the absence of this proposed ban. Regardless of how small the likelihood may be, this proposed ban would ensure that newly manufactured devices would not be shipped by air; thus, this action would further reduce the chance of mislabeling of oxygen generators due to human error.

V. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a ''significant economic impact on a substantial number of small entities.''

In terms of regulatory flexibility, the FAA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. As stated previously in the cost section of this evaluation, the proposed rule is not expected to impose any compliance costs on those aircraft operators operating under parts 91, 121, 125, and 135.

VI. International Trade Impact Assessment

In accordance with the Office of Management and Budget's memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. The FAA finds that the proposed rule would not have a detrimental impact on the trade opportunities for either U.S. firms conducting business abroad or foreign firms conducting business in the United States. This assessment is based on the belief that the proposed rule would not impose any costs on potentially impacted aircraft operators.

VII. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each federal agency, to the

extent permitted by law, to prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. This proposed rule does not contain any federal intergovernmental mandates. However, it does contain a private sector mandate. Since expenditures by the private sector will not exceed $100 million annually, because little or no costs are imposed by this proposed rule, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

VIII. Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this proposal would not have federalism implications warranting the preparation of a Federalism Assessment.

IX. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this proposed rule.

X. International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international rules and Joint Aviation Authorities rules and has identified no conflicts between these proposed amendments and the foreign requirements and prohibitions. Moreover, these proposed rules, if adopted, will not apply to foreign operators. Nonetheless, the FAA seeks comment on whether there are any differences between the proposed rules and any corresponding ICAO standards.

XI. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the Federal Aviation Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying 14 CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the operation of both transport and non-transport category airplanes under 14 CFR parts 91, 121, 125, and 135, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation Safety.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend the Federal Aviation Regulations (14 CFR parts 91, 119, 121, 125, and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506, 46507, 47122, 47508, 47528, 47531, articles 12 and 29 of the Convention on International Civil Aviation (62 stat. 1180).

2. Amend § 91.1 by adding paragraph (c) to read as follows:

§ 91.1 Applicability.

* * * * *

(c) Each person who carries, or acts in any manner that would result in the carriage of, a device designed as a chemical oxygen generator is required to comply with the prohibitions in § 91.20 of this part.

3. Section 91.20 is added to read as follows:

§ 91.20 Prohibitions on the carriage of devices designed as chemical oxygen generators.

(a) Except as provided in paragraphs (b) and (c) of this section, no person may carry, or act in any manner that could result in the carriage of a device designed as a chemical oxygen generator, as defined in paragraph (d) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

(b) For all-cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102(c)), and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided—

(1) It is located in a Class B or E cargo compartment, or a compartment that is equipped with a fire/smoke detection system;

(2) It is separated from other cargo before flight; and

(3) The quantity carried does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).

(c) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

(d) For purposes of this section, a ''device designed as a chemical oxygen generator'' includes—

(1) A device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) A device that has been discharged and thus has already produced oxygen by chemical reaction, regardless of whether there is residue remaining in the device; and

(3) A device that is newly manufactured but not charged with chemicals for the generation of oxygen..

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Section 119.3 is amended by adding the following definition in alphabetical order:

§ 119.3 Definitions.

* * * * *

Chemical oxygen generator means a device that produces oxygen by chemical reaction.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend § 121.1 by adding paragraph (g) to read as follows:

§ 121.1 Applicability.

* * * * *

(g) Each person who carries, or acts in any manner that would result in the carriage of, a device designed as a chemical oxygen generator is required to comply with the prohibitions in § 121.540.

3. Section 121.540 is added to read as follows:

§ 121.540 Prohibitions on the carriage of devices designed as chemical oxygen generators.

(a) Except as provided in paragraphs (b) and (c) of this section, no person may carry, or act in any manner that could result in the carriage of, a device designed as a chemical oxygen generator, as defined in paragraph (d) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

(b) For all-cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102(c)) , and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided—

(1) It is located in a Class B or E cargo compartment, or a compartment that is equipped with a fire/smoke detection system;

(2) It is separated from other cargo before flight; and

(3) The quantity carried does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).

(c) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

(d) For purposes of this section, a ''device designed as a chemical oxygen generator'' includes—

(1) A device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) A device that has been discharged and thus has already produced oxygen by chemical reaction, regardless of whether there is residue remaining in the device; and

(3) A device that is newly manufactured but not charged with chemicals for the generation of oxygen.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

1. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

2. Amend § 125.1 by adding paragraph (d) to read as follows:

§ 125.1 Applicability.

* * * * *

(d) Each person who carries, or acts in any manner that would result in the carriage of, a device designed as a chemical oxygen generator is required to comply with the prohibitions in § 125.335.

3. Section 125.335 is added to read as follows:

§ 125.335 Prohibitions on the carriage of oxidizers and devices designed as or used for the generation of oxygen.

(a) Except as provided in paragraphs (b) and (c) of this section, no person may carry, or act in any manner that could result in the carriage of, a device designed as a chemical oxygen generator as defined in paragraph (d) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

(b) For all-cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102(c)) , and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided—

(1) It is located in a Class B or E cargo compartment, or a compartment that is equipped with a fire/smoke detection system,

(2) It is separated from other cargo before flight; and

(3) The quantity does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).

(c) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

(d) For purposes of this section, a ''device designed as a chemical oxygen generator'' includes—

(1) A device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) A device that has been discharged and thus has already produced oxygen by chemical reaction regardless of whether there is residue remaining in the device; and

(3) A device that is newly manufactured but not charged with chemicals for the generation of oxygen.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

2. Amend § 135.1 by adding paragraph (e) to read as follows:

§ 135.1 Applicability.

* * * * *

(e) Each person who carries, or acts in any manner that would result in the carriage of, a device designed as a chemical oxygen generator is required to comply with the prohibitions in § 135.88.

3. Section 135.88 is added to read as follows:

§ 135.88 Prohibitions on the carriage of devices designed as chemical oxygen generators.

(a) Except as provided in paragraphs (b) and (c) of this section, no person may carry, or act in any manner that would result in the carriage of, a device designed as a chemical oxygen generator as defined in paragraph (d) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

(b) For all-cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102(c)) , and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided—

(1) It is located in a Class B or E cargo compartment or a compartment that is equipped with a fire/smoke detection system;

(2) It is separated from other cargo before flight; and

(3) The quantity carried does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).

(c) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

(d) For purposes of this section, a ''device designed as a chemical oxygen generator'' includes—

(1) A device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) A device that has been discharged and thus has already produced oxygen by chemical reaction, regardless of whether there is residue remaining in the device; and

(3) A device that is newly manufactured but not charged with chemicals for the generation of oxygen.

Issued in Washington, DC on August 21, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

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federal register

Thursday
August 27, 1998

Part III

Department of Agriculture

Food Safety and Inspection Service

Department of Health and Human Services

Centers for Disease Control and Prevention
Food and Drug Administration

Environmental Protection Agency

President's National Food Safety Initiative; Notice

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–045N]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

[Docket No. 97N–0074]

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. OPP–00550; FRL–6019–9]

President's National Food Safety Initiative

AGENCY: Food Safety and Inspection Service, USDA; Research, Education, and Economics, USDA; Centers for Disease Control and Prevention, HHS; Food and Drug Administration, HHS; Environmental Protection Agency.

ACTION: Notice: public meeting; establishment of public dockets.

SUMMARY: The United States Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) are announcing a public meeting to discuss and begin development of a comprehensive strategic Federal food safety plan. The purpose of the strategic plan is to reduce the annual incidence of acute and chronic foodborne and waterborne illness by further enhancing the safety of the nation's food supply. USDA, the Food and Drug Administration (FDA), and EPA are also establishing public dockets to receive comments about the Food Safety Initiative's strategic planning process and the plan.

DATES: The meeting will be held on October 2, 1998, from 9:30 a.m. to 3 p.m. Comments should be submitted by November 25, 1998.

ADDRESSES: The meeting will be held at: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Arlington, VA.

For instructions on the submission of written and electronic comments, refer to Unit II. of this document.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Traci Phebus, of USDA, at (202) 501–7136, fax: (202) 501–7642, e-mail: foodsafetymeeting@usda.gov. Participants may reserve time for public comments when they register. Space will be allocated on a first come, first served basis. Participants are encouraged to submit a disk along with their written statements in Wordperfect 5.1/6.1 or ASCII file format.

Questions regarding general arrangements and logistical matters should be addressed to Ms. Torrie Mattes. Additionally, participants who require a sign language interpreter or other special accommodations should contact Ms. Torrie Mattes, of USDA, no later than 10 days prior to the meeting, at (202) 501–7136, fax: (202) 501–7642, e-mail: T.Mattes@usda.gov.

For questions about the meeting or to obtain copies of the report, ''Food Safety From Farm to Table: A National Food Safety Initiative,'' contact Ms. Karen Carson, of FDA, at (202) 205–5140, fax: (202) 205–5025, e-mail: kcarson@Bangate.fda.gov. Copies of the report also are available from the following web sites:

FDA at http://www.cfsan.fda.gov/~dms/fsreport.html

CDC at http://www.cdc.gov/ncidod/foodsafe/report.htm

EPA at http://www.epa.gov/opptsfrs/home/nfssuppt.htm

Food Safety and Inspection Service (FSIS) at http://www.fsis.usda.gov

Information about the National Academy of Sciences' report on ''Ensuring Safe Food from Production to Consumption'' can be found at the following web site: http://www.nas.edu.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1997, the President issued a directive to the Secretaries of USDA and HHS and the Administrator of EPA to work with consumers, producers, industry, States, Tribes, universities, and the public to identify ways to further improve the safety of our food supply, and to report back to him in 90 days. The Federal food safety agencies, working with their colleagues in the States, in the food industries, in academia, and with consumers, initially focused on the goal of reducing illness caused by microbial contamination of food and water. This goal was to be reached through systematic improvements in six key components of the food safety system: foodborne outbreak response coordination, surveillance, inspections, research, risk assessment, and education. The plan for meeting this goal was presented to the President in May 1997, in ''Food Safety From Farm to Table: A National Food Safety Initiative.'' In October 1997, the President issued an additional directive to ensure the safety of domestic and imported fresh produce and other imported foods. This second directive was incorporated into the National Food Safety Initiative (NFSI).

In less than 2 years, the agencies have taken significant strides forward in building a strengthened national food safety system. Building blocks for the infrastructure are in place: increased and targeted surveillance through FoodNet and PulseNet; coordination of Federal, State and local responses to outbreaks by the Foodborne Outbreak Response Coordinating Group (FORCG); expanded reliance on preventive controls (such as the Hazard Analysis and Critical Control Points (HACCP) based inspection systems for meat, poultry and seafood, and Good Agricultural and Good Manufacturing Practices guidance for produce); coordination of Federal food safety research; cooperation on risk assessment through the interagency Risk Assessment Consortium; leveraging inspection resources; and innovative public/private education partnerships. These efforts provide a common ground for moving forward.

In the May 1997 report, the food safety agencies made a commitment to prepare a 5–year comprehensive strategic plan, with the participation of all concerned parties. The President recently issued an Executive Order establishing a President's Food Safety Council which will now be responsible for development of a comprehensive strategic Federal food safety plan. A coordinated food safety strategic planning effort is needed to build on the common ground, and to tackle some of the difficult public health, resource, and management questions facing Federal food safety agencies. The strategic plan will focus on not just microbial contamination, but the full range of issues and actions necessary to ensure the safety of the food and water Americans use and consume. The charge is to develop a strategic long-range plan that can be used to help set priorities, improve coordination and efficiency, identify gaps in the current system and how to fill those gaps, enhance and strengthen prevention and intervention strategies, and identify measures to show progress. In developing the plan, the agencies will consider the conclusions and recommendations of the National Academy of Sciences' report on ''Ensuring Safe Food from Production to Consumption'' and the review of Federal food safety research and the research plan currently being developed by an interagency working group under the auspices of the National Science and Technology Council.

The food safety agencies have already taken the first steps to lay the

groundwork for development of the strategic plan, which the Council will now develop, by participating in interagency strategic planning sessions. The result is the following draft statement encompassing the agencies' vision for the U.S. food safety system and the roles of all those involved in food safety.

Consumers can be confident that food is safe, healthy, and affordable. We work within a seamless food safety system that uses farm-to-table preventive strategies and integrated research, surveillance, inspection, and enforcement. We are vigilant to new and emergent threats and consider the needs of vulnerable populations. We use science- and risk-based approaches along with public/private partnerships. Food is safe because everyone understands and accepts their responsibilities.

The next step is to engage consumers, producers, industry, food service providers, retailers, health professionals, State and local governments, Tribes, academia, and the public in the strategic planning process, beginning with a discussion of the draft vision statement and how to structure a strategic planning process that involves all interested parties and best addresses the important food safety challenges and makes the best use of the agencies' limited resources. This October 2nd meeting is the first of several public meetings to assist with development of a long-term strategic plan. Additional public meetings will be announced in the **Federal Register** prior to the date of each meeting.

The purpose of the October 2nd meeting is to obtain the public's view on a long-term vision for food safety in the U.S. and to identify a strategic planning process, goals, and critical steps as well as potential barriers to achieving that vision. The Council is interested in comments on the draft vision statement and suggestions for goals and how they might be achieved. Some questions to help frame the discussion follow.

1. Does the vision statement accurately depict an achievable food safety system vision? What modifications, if any, would you make?

2. What are the barriers to pursuing this vision? What gaps currently exist in the food safety system that impede achievement of this vision?

3. To make the vision a reality, what changes are needed for: (a) government agencies at the Federal, State, and local level; (b) industry; (c) public health professionals; (d) consumers; and (e) others?

4. What should be the short-term goals and critical steps to realize this vision? What should be the long-term goals and steps?

5. What is the best way to involve the public in development of a long-term food safety strategic plan? What additional steps besides public meetings would be beneficial?

II. Public Dockets and Submission of Comments

The agencies are announcing the establishment of public dockets about the Food Safety Initiative Strategic Plan. Comments submitted to the dockets are to be identified with the appropriate docket number. For those comments directed to USDA, use Docket No. 98–045N, and for comments directed to FDA, use Docket No. 97N–0074. Commenters are encouraged to submit a disk along with their written comments in Wordperfect 5.1/6.1 or ASCII file format. Submit written comments (in triplicate) to:

USDA/FSIS

USDA/FSIS Hearing Clerk, 300 12th St., SW., Rm. 102 Cotton Annex, Washington, DC 20250–3700

FDA

Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Drive, Rm. 1-23, Rockville, MD 20857

Electronic Comments

Comments may also be submitted electronically to: oppts.homepage@epa.gov. All comments and data in electronic form must be identified by the docket number ''OPP–00550.'' Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Transcripts

Transcripts of the public meetings may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcripts of the public meetings will be available for public examination at the FDA Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Transcripts of the meetings will also be available on the internet at: http://www.fda.gov/ohrms/dockets/default.htm and http://www.epa.gov/opptsfrs/home/nfssuppt.htm.

Electronic Docket

The public docket in its entirety will be available on the internet at: http://www.epa.gov/opptsfrs/home/rules.htm#docket.

List of Subjects

Environmental protection, Food safety.

Dated: August 20, 1998.

Catherine E. Woteki,

Undersecretary for Food Safety, United States Department of Agriculture.

Dated: August 20, 1998.

James A. O'Hara,

Deputy Assistant Secretary for Health, Department of Health and Human Services.

Dated: August 20, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances, Environmental Protection Agency.

[FR Doc. 98–22802 Filed 8–25–98; 11:18 am]

BILLING CODE 6560–50–F

Federal Register

Thursday
August 27, 1998

Part IV

Department of Transportation

Federal Transit Administration

Job Access and Reverse Commute Program; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket # FTA–98–4343]

Job Access and Reverse Commute Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation is seeking public advice in implementing the Jobs Access and Reverse Commute Program authorized in Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21). This notice also includes questions regarding the implementation of the Job Access/Reverse Commute Program. Responses to the questions posed are invited.

DATES: Comments must be submitted by September 18, 1998.

ADDRESS: Comments should be sent to the Department of Transportation, Docket # FTA–98–4343, Central Docket Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Douglas Birnie, Program Manager, (202) 366–9157.

SUPPLEMENTARY INFORMATION:

Program Preparation

The U.S. Department of Transportion (DOT) intends to complete a program solicitation and guidelines by October 1, when FY 1999 funding becomes available. Funding availability in early FY 1999 will ensure that assistance provided pursuant to Section 3037 of TEA–21 may be applied in a timely fashion to support regional programs creating Job Access and Reverse Commute services. Limited funding, particularly in the initial years of the program, may affect funding availability for some applications.

Although implementing guidelines for the Job Access & Reverse Commute program are being developed, prospective applicants should review the legislative criteria as a guide to the preparation of programs for funding. Please note that the Job Access & Reverse Commute funding is predicated on the development of local partnerships. A collaborative transportation/human services planning process must be established to develop Job Access programs. This process should involve agencies implementing welfare and work force development programs, non-profit community based and faith-based organizations, stakeholder representatives, employers and a variety of existing transportation providers and agencies. In larger urban areas, Metropolitan Planning Organizations (MPO) will select applicants and in smaller urbanized and rural areas, states will select applicants. The programs that are developed are to be regional in nature, although portions of the program can be targeted to specific areas within the region. An area may have one designated recipient for funds, but these funds may be passed to any number of subrecipients. An operating partnership involving consultation and use of existing public, private and non-profit transportation providers, including the area transit agency, is expected. Using the existing transportation infrastructure reduces start-up costs and enhances service sustainability. Finally, a financial partnership is encouraged among the stakeholders. The Job Access and Reverse Commute program requires a 50/50 match. This program is considered catalytic funding upon which to assemble additional human service, transportation and private resources to meet job access transportation needs.

Funding from other Federal programs may be used as match dollars. These include Temporary Assistance for Needy Families (TANF) and Community Services Block grants through the U.S. Department of Health and Human Services (HHS) and Welfare to Work (WtW) grants through the U.S. Department of Labor (DOL) as well as the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant and HOPE VI Grants. TANF and WtW grants, when used as match, may be used only for new and expanded transportation services and cannot be used for construction or to subsidized current transportation operating expenses. Such funds also must supplement rather than supplant other State expenditures on transportation. Other transportation funds allocated to transportation agencies by DOT may also be used to address these transportation needs.

Public Consultation

DOT in conjunction with its other Federal partners desires to develop a Job Access & Reverse Commute program that is responsive to the needs of the stakeholders who are implementing welfare reform and transportation activities. We are seeking your advice on the questions listed below and other issues related to the implementation of the program. Although we will not be able to respond directly to individual comments, we will address collectively the comments received when we issue the national program solicitation and guidelines. For the convenience of those individuals and organizations with computer access to the internet, you may submit your written comments to FTA home page web site, which may be reached at—*http://www.fta.dot.gov/wtw/japc.*

Additionally, any public interest organization seeking to elaborate upon its views with Departmental officials may request a meeting. Please contact Ms. Corine Hegland, U.S. Department of Transportation at (202) 366–8850.

Program Purpose

The Jobs Access and Reverse Commute Program provides competitive grants to local governments and non-profit organizations to develop transportation services to connect welfare recipients and low-income persons from their residence to employment and support services.

Program Features

Section 3037 of TEA–21 authorizes a Job Access and Reverse Commute program. Job Access projects provides transportation services to connect welfare recipients and low-income persons to jobs and activities related to employment. Reverse Commute projects provides the public transportation services to the general public that provide connections to suburban employment centers from urban centers, rural areas and other suburban locations.

- Criteria for selection include indication of the need for additional services as identified in the transportation plan and explanation of the extent to which services will address these needs.

Funding Features

- Split funded from both the Mass Transit Account and General Funds.
- Guaranteed funding (Mass Transit Account & general revenues) increases from $50 million in 1999 to $150 million in 2003.
- Not more than $10 million per year may be used for reverse commute activities.
- Provides 50% Federal share.
- Other Federal transportation-eligible funds could be used to meet the local match, including TANF and WtW funding for Access to Jobs projects.

JOB ACCESS AND REVERSE COMMUTE GRANTS

[In millions]

	Year					
	1998	1999	2000	2001	2002	2003
Total Authorization	0	$150	$150	$150	$150	$150
Guaranteed	0	50	75	100	125	150

Grant Award Factors

- The percentage of population that is welfare recipients.
- The need for additional services and the extent to which the proposed services will address those needs.
- Coordination with and use of existing transportation providers.
- Coordination with state welfare agencies implementing the TANF program.
- Use of innovative approaches.
- The presence of a regional plan and long term financing strategies.
- Consultation with the community to be served.
- The need for additional services identified in the regional transportation plan for reverse commute.

Eligible Costs

- Operating and capital expenses for Job Access transportation service.
- Funds promotion of employer-provided transportation, use of transit for non-traditional and transit voucher programs.

Eligible Applicants

- Local governments, non-profit organizations, and designated recipients [defined under 49 U.S.C. Section 5307(a)(2)].
- MPOs would designate applicants in urbanized areas above 200,000 population; states (state's chief executive officer) would designate applicants in urbanized areas of 200,000 population or lower and rural areas.

Job Access and Reverse Commute Program Implementation Questions

Funding Distribution & Program Focus

1. In FY 1999, funding for the Job Access/Reverse Commute Program may be limited to $50 million. In light of funding constraints, what grant award strategy should be pursued? Should there be maximum or minimum grant sizes? Should grants vary by the size of the region, *e.g.,* major areas with populations over one million, areas between 200,000 and one million, areas between 50,000 and 200,000, non-urbanized rural areas?

2. Should grants to support local Job Access programs be made on an annual basis or on a multi-year basis covering several years worth of local activity? Annual multi-year financial grant commitments must be made subject to the availability of congressional appropriations.

3. Should Job Access and Reverse Commute funding be considered as one program where applicants can elect to reserve a percentage of their funds for reverse commute services—not tied to welfare recipients or low income person? Or, should the two components be treated as separate programs operating independently?

4. What steps should FTA take to encourage a broad range of groups, not limited to its normal mass transit partners, to participate in this program?

Eligibility Criteria

1. The legislation requires that all grants be subject to the terms and conditions of FTA's Formula (Section 5307) Program such as the Americans with Disabilities Act requirements, labor protections and others. In light of these requirements, what obstacles does this present for non-traditional grant recipients? What actions, *e.g.,* receiving funding as grantee subrecipients, are possible to ensure the participation of non-traditional recipients in the program?

2. The legislation allows FTA to fund capital and operating costs and clearly is directed to the development of new and expanded Job Access and Reverse Commute services. In addition, one of the factors for consideration in grant award criteria is the need for additional services.

What activities and services should be included as eligible? Should any activities or services be specifically excluded?

Welfare block grants (TANF & WtW) and other DOT funds can be used to purchase transit passes for welfare recipients and low income persons on existing transit routes and services. Should Job Access and Reverse Commute also be available to fund transit passes?

3. What criteria should be used for screening candidates? The legislation spells out eight (8) factors that must be considered in awarding grants (see program description). Do these factors need additional definition? How should they be weighted in the rating process? Are there other criteria that should be addressed? Certain populations suffer disproportionate unemployment rates. How should these ''hard-to-serve'' populations be treated in the Job Access and Reverse Commute Program?

Planning and Evaluation

1. The Job Access and Reverse Commute Program provides funding for initiating programs whose long-term viability will depend upon coordinating services and programming traditional sources of funding. This will necessitate coordinating and integrating the Job Access and Reverse Commute Program with existing DOT, DHHS, DOL and HUD funding programs. What issues arise in achieving the blending of resources from several Federal programs? What incentives and assurances could be provided to facilitate this?

2. The legislation requires that MPOs select applicants within urbanized areas with populations over 200,000 and that states select applicants for urbanized areas with populations at or below 200,000, as well as rural areas. How should this selection process by MPOs and states take place and what documentation of participation should be required to ensure that all stakeholders are involved in project selection and development? In particular, how should low income community representatives be involved in developing plans? Should sign-offs be required?

3. The legislation has a number of planning requirements for the Job Access/Reverse Commute Program. For example, applicants must document a regional transportation plan and any project must be developed by a coordinated Transportation/Human Services planning process.

Should applicants address each requirement separately or together? What evidence of a collaborative decisionmaking process at the local level among transportation, employment and other human service organizations would satisfy these requirements?

4. The legislation has a number of coordination requirements. Applicants must coordinate with the state agency that administers the state welfare program. Applicants also must coordinate with affected transit grant recipients and receive approval of such grant recipients. What guidance should be given? How should this be documented?

5. The General Accounting Office must evaluate the effectiveness of this program every six months, while DOT must prepare an evaluation report within two years. What specific performance measures should DOT use in assessing the effectiveness of this program? How could such data be obtained and reported?

[Examples might include the number of additional jobs that became accessible with reasonable commute times, the number of new riders or new services, or some combination of the two, and area coverage by time period]

6. What other comments or suggestions can you provide to ensure a successful Job Access/Reverse Commute Program?

Issued: August 25, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–23146 Filed 8–25–98; 12:22 pm]

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Federal Register

Thursday
August 27, 1998

Part V

The President

Proclamation 7117—Death of Lewis F. Powell, Jr.

Federal Register
Vol. 63, No. 166
Thursday, August 27, 1998

Presidential Documents

Title 3—

The President

Proclamation 7117 of August 25, 1998

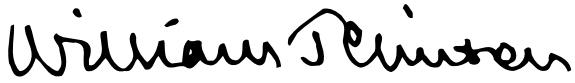
Death of Lewis F. Powell, Jr.

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Lewis F. Powell, Jr., retired Associate Justice of the Supreme Court of the United States, I hereby order, by the authority vested in me as President by the Constitution and laws of the United States of America, that the flag of the United States shall be flown at half-staff on the day of his interment. On such day the flag shall be flown at half-staff until sunset upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions; and at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



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Federal Register

Vol. 63, No. 166

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FEDERAL REGISTER PAGES AND DATES, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 27, 1998

AGRICULTURE DEPARTMENT
Rural Utilities Service
Telecommunications loans:
Telecommunications systems; Year 2000 compliance; published 8-27-98

COMMERCE DEPARTMENT
Census Bureau
Foreign trade statistics:
Shipper's export declaration requirements for exports valued at less than $2,500; published 8-27-98

COMMERCE DEPARTMENT
Export Administration Bureau
Export administration regulations:
Shipper's export declaration requirements for exports valued at less than $2,500; published 8-27-98

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; published 8-27-98

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; published 7-28-98

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Regulatory fees (1998 FY); assessment and collection
Correction; published 8-27-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adjuvants, production aids, and sanitizers—
Calcium bis[monethyl(3,5-di-tert-butyl-4-hydroxybenzyl) phosphonate]; published 8-27-98
Human drugs:
Geriatric use subsection addition in labeling; specific requirements on content and format; published 8-27-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 7-23-98
Empressa Brasileira de Aeronautica S.A.; published 7-23-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Onions grown in—
Idaho and Oregon; comments due by 8-31-98; published 7-2-98
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 8-31-98; published 8-11-98

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Fire ant, imported; comments due by 8-31-98; published 7-2-98

AGRICULTURE DEPARTMENT
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Price support levels—
Peanuts; cleaning and reinspection; comments due by 9-4-98; published 8-5-98

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Materials, equipment, and construction—
Special equipment specifications; comments due by 9-4-98; published 7-6-98

COMMERCE DEPARTMENT
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Fishery conservation and management:
Atlantic swordfish; comments due by 9-1-98; published 8-20-98
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Scallop; comments due by 8-31-98; published 6-30-98
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Incidental taking—
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DEFENSE DEPARTMENT
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Federal procurement; affirmative action reform; comments due by 8-31-98; published 7-1-98

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Montreal Protocol, U.S. obligations; production and consumption controls; comments due by 9-3-98; published 8-4-98
Montreal Protocol, U.S. obligations; production and consumption controls; comments due by 9-3-98; published 8-4-98
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 9-3-98; published 8-4-98
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-31-98; published 7-31-98
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State underground storage tank program approvals—
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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy] pyridine; comments due by 9-4-98; published 7-6-98
Sodium chlorate; comments due by 8-31-98; published 7-1-98
Superfund program:
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National priorities list update; comments due by 8-31-98; published 7-30-98
National priorities list update; comments due by 8-31-98; published 7-30-98
Toxic substances:
Lead-based paint activities; grant provision amendment; comments due by 9-3-98; published 8-4-98
Lead-based paint; identification of dangerous levels of lead; comments due by 9-1-98; published 6-3-98

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FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
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Guam; comments due by 8-31-98; published 7-20-98
Kentucky; comments due by 8-31-98; published 7-20-98
Michigan; comments due by 8-31-98; published 7-20-98